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THE  
**TRIAL**  
OF  
JAMES STUART, ESQ.

YOUNGER OF DUNEARN,

BEFORE THE

**High Court of Justiciary,**

AT EDINBURGH,

ON MONDAY, JUNE 10. 1822.

---

*Taken in Short Hand.*

---

WITH AN APPENDIX OF DOCUMENTS.

EDINBURGH:

PRINTED FOR ARCHIBALD CONSTABLE AND CO. EDINBURGH;

HURST, ROBINSON, AND CO. AND JAMES RIDGWAY,

LONDON.

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1822.

**\* \* \* This Account of Mr STUART's Trial has been Prepared under the Direction of his Friends, and in a way which enables the Publishers to state, that the utmost reliance may be placed on its Correctness and Accuracy.**



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Printed by George Ramsay and Company.

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# TRIAL

OF

## JAMES STUART, Esq.

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### *PRELIMINARY PROCEEDINGS.*

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ON the 25th of May 1822, a Citation was left at Mr STUART's house, No. 2, North Charlotte Street, Edinburgh, charging him to appear before the High Court of Justiciary to be held at Edinburgh on Monday, the 10th of June 1822, at ten o'Clock forenoon, to underlie the Law for the crime of Murder, on the following Indictment :

“ JAMES STUART, Clerk to the Signet, lately residing in Charlotte Street of Edinburgh, you are Indicted and Accused at the instance of SIR WILLIAM RAE of St Catharines, Baronet, his Majesty's Advocate, for his Majesty's interest : That albeit, by the laws of this and of every other well governed realm, Murder is a crime of an heinous nature, and severely punishable : Yet true it is and of verity, that you the said James Stuart are guilty of the said crime, actor, or art and part : In so far as, you the said James Stuart having conceived malice and ill-will against the late SIR ALEXANDER BOSWELL of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel, or duels, you did, upon the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises

in Nelson Street of Glasgow occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or pretended to have found among them, some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, wickedly and maliciously discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right side, and shattered the collar bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you the said James Stuart: And you the said James Stuart, conscious of your guilt in the premises, did abscond and flee from justice: And a letter, bearing to be dated ‘Auchinleck, Novr. 7<sup>th</sup> 1821,’ and to be subscribed, ‘Alexander Boswell;’ as also a writing, entitled ‘Whig Song,’ and addressed on the back, ‘For Mr ‘Alexander, Sentinel Office, Glasgow;’ a letter or writing, bearing to be dated ‘Dumbarton, Decr. 17<sup>th</sup> 1821,’ subscribed ‘Ignotus;’ and a writing entitled ‘James Perry, Esqr. ‘late proprietor and editor of the Morning Chronicle,’ and addressed on the back ‘Mr Alexander, Sentinel Office, ‘Glasgow,’ being all to be used in evidence against you at your trial, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the



same : At least, time and place above libelled, the said Sir Alexander Boswell was murdered ; and you the said James Stuart are guilty thereof, actor, or art and part. All which, or part thereof, being found proven by the verdict of an Assize, before the Lord Justice-General, the Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said James Stuart Ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

DUN<sup>N</sup>. M'NEILL, A. D.

### LIST OF WITNESSES.

- 1 James Earl of Rosslyn, now or lately residing at Dysart House, parish of Dysart, in the shire of Fife.
- 2 John Douglas of Lockerby, now or lately residing in Shandwick Place of Edinburgh.
- 3 James Brougham, barrister at law, Lincoln's Inn Fields, London.
- 4 George Wood, surgeon in Edinburgh.
- 5 Robert Liston, now or lately surgeon in Edinburgh.
- 6 James Brown Johnston, now or lately physician in Kirkcaldy, in the shire of Fife.
- 7 Dr John Thomson, professor of military surgery in Edinburgh.
- 8 Alexander Boswell, writer to the signet, now or lately residing in Edinburgh.
- 9 John Waugh Brougham, wine-Merchant in Edinburgh
- 10 Andrew Watt, now or lately farmer at Balbarton, in the Parish of Kinghorn, and shire of Fife.
- 11 David Blair, now or lately apprentice to, and residing with Peter Moyes, smith at Baidler-toll-bar, in the parish of Kinghorn, and shire of Fife.
- 12 The said Peter Moyes.
- 13 William M'Kenzie, now or lately coachman to Claud Irvine Boswell, lately one of the Senators of the College of Justice, and now or lately residing at Balmuto House, in the parish of Kinghorn, and shire of Fife.
- 14 Alexander Struthers, now or lately butler to the said Claud Irvine Boswell.
- 15 William Spalding, writer in Edinburgh, now or lately residing in Pitt Street, Edinburgh, and now or lately in the employment of Alexander Young, Roger Ayton, and Robert Rutherford, or one or other of them, writers to the signet in Edinburgh.

- 16 William Henderson, now or lately writer in Hamilton, in the county of Lanark.
- 17 Felix Dougharty, now or lately clerk of the said William Henderson, and now or lately residing in or near Hamilton aforesaid.
- 18 Loudon Robertson, lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow, and now or lately residing in Dundee.
- 19 Alexander Ure, now or lately writer in Glasgow.
- 20 William Bankhead, now or lately clerk of the said Alexander Ure.
- 21 Adam Duff, sheriff-depute of the shire of Edinburgh
- 22 James Currie, now or lately clerk in the sheriff-clerk's office, Edinburgh.
- 23 Robert Bankhead, now or lately waiter in the Tontine Inn or Hotel of Glasgow.
- 24 William M'Comb, now or lately waiter or boots in the said Tontine Inn of Glasgow.
- 25 Robert Anderson, waiter, now or lately residing in Gallowgate of Glasgow.
- 26 William Scott, now or lately waiter in the Tontine Inn or Hotel of Glasgow.
- 27 Robert Alexander, now or lately editor and proprietor of the Glasgow Sentinel, Nelson Street, Glasgow.
- 28 David Alexander, now or lately clerk of the said Robert Alexander.
- 29 William Richardson, now or lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow.
- 30 William Miller, now or lately in the employment of the said Robert Alexander in the Glasgow Sentinel Office aforesaid.
- 31 John Wilson, now or lately compositor in the Glasgow Sentinel Office aforesaid.
- 32 Alexander M'Glashan, now or lately compositor in the Glasgow Sentinel Office aforesaid.
- 33 William Home Lizars, engraver, James's Square, Edinburgh.
- 34 Thomas Clerk, engraver, High Street, Edinburgh.
- 35 James Walker, tutor to Sir James Boswell, Bart. of Auchinleck, now or lately residing at Wellwood Lodge, parish of St Cuthberts, and county of Edinburgh.
- 36 Miss Janet Theresa Boswell, daughter of the deceased Sir Alexander Boswell of Auchinleck, Bart. now or lately residing at Wellwood Lodge aforesaid.

DUN<sup>N</sup>. M'NEILL, A. D.

## LIST OF ASSIZE.

*County of Edinburgh.*

- John Borthwick of Crookstone.  
 John Pringle of Symington.  
 Thomas Adinston of Carcant.  
 William Pagan of Linburn.  
 5 James Forrest of Comiston.  
 John Wauchope of Edmonstone.  
 Sir Alexander Charles Maitland Gibson of Cliftonhall,  
 Bart.  
 Sir John Hope of Craighall, Bart.  
 James Watson of Saughton.  
 10 George Reid of Rathobank.  
 John Inglis of Auchindinny.  
 James Haig of Lochrin.  
 John Alexander Higgins of Neuck.  
 John Thomson of Burnhouse.

*Haddingtonshire.*

- 15 William Hunter of Tynefield.  
 John Anderson of Whitburgh.  
 William Aitchison younger of Drummorie.  
 Hugh Turnbull of Branxton.  
 James Balfour of Whittinghame.

*County of Linlithgow.*

- 20 Sir James Dalyell, Bart. of Binns.  
 Gabriel Hamilton Dundas of Duddingstone.  
 James Dundas of Dundas.  
 Lieutenant-Colonel Andrew Gillon of Wallhouse  
 Alexander Learmonth of Crossflats.

*City of Edinburgh.*

- 25 David Brown, Clothier in Edinburgh.  
 David Murray, spirit dealer there.  
 Robert Paterson, ironmonger there.  
 John Milne, ironmonger there.  
 George Callum, tinsmith there.  
 30 Adam Elder, carver and gilder there.  
 William Rodgers, haberdasher there.  
 Andrew Kerr, upholsterer there.  
 Patrick Crichton, coachmaker there.  
 Robert Stevenson, engineer there.  
 35 John Leitch, clothier there.

John Hill, clothier there.

James Scrimzeour, cabinet-maker there.

Thomas Wilkie, cabinet-maker, Queen's Place.

*Town of Leith,*

Thomas Macritchie, wine-merchant in Leith.

45 John Somerville, tanner there.

James Veitch, brewer there.

James Allan, wine-merchant there.

Mathew Smellie, writer there.

Peter Latta Wilson, merchant there.

45 William Telfer, merchant there.

GEO. FERGUSSON.

AD. GILLIES.

ARCHD. CAMPBELL.

The writings founded on in the Indictment are of the following tenor :

Sir,

*Auchinleck, Nov. 17th 1821.*

A friend of mine, having recommended the *Sentinel*, and having the satisfaction to see it termed the "Phoenix of the Beacon" in a copy of the Scotsman, which the same friend has sent me, I beg that you will have the goodness to order a copy of the *Sentinel* to be sent, addressed

*Sir A. Boswell of Auchinleck, Mauchline.*

I am, Sir, your obedient Servant,

ALEXANDER BOSWELL.

*The Editor of the Sentinel, Glasgow.*

# WHIG SONG,

Supposed to be written by one of the *James's*, certainly not by King James the I. or King James the V. but probably by one of the house of Stuart.

TUNE—*Sheriff Muir.*

THERE'S some say that they're Whigs,  
And some say that we're Whigs,  
And some say there's nae Whigs ava, man,  
But ae thing I'm sure,  
A pauky Whig do-er

'S the Whig that out-whigifies a', man.

Chorus.—And they crack and we tak,

And they tak and we crack,

And we tak and they crack awa', man.



For conscience the *auld* Whigs  
 War *sterlin'* and bauld Whigs,  
 And gied their oppressors a claw, man;  
 But *now* Whigs for *sillar*,  
 (Their calf on the Pillar,)  
 Ken nought about conscience ava, man.  
 And they crack and we tak, &c.

The de'il took the lawyer,  
 And left the poor sawyer,  
 He was na a mouse to his paw, man;  
 Oure straught was his mark, man,  
 But a Whig Signet Clerk, man,  
 Can ony thing, ony way thraw, man.  
 And they crack and we tak, &c.

They rant about Freedom,  
 But when ye hae fee'd 'em,  
 Cry het or cry cauld, and they'll blaw, man;  
 Tak him maist rampagant,  
 And mak him King's agent,  
 And hech! how his fury will fa', man?  
 And they crack and we tak, &c.

Ther's stot-feeder Stuart,  
 Kent for that fat-cow—art,  
 How glegly he kicks ony ba', man;  
 And Gibson, lang chiel, man,  
 Whase height might serve weel, man,  
 To read his ain name on a wa', man.  
 And they crack and we tak, &c.

Your knights o' the pen, man,  
 Are a' *gentlemen*, man,  
 Ilk *body's* a *limb* o' the law, man;  
 Tacks, bonds, precognitions,  
 Bills, wills, and petitions,  
 And *ought* but a *trigger* some draw, man.  
 And they crack and we tak, &c.

Sae foul fa' backbiters,  
 Wha rin down sic writers,  
 Wha fatten sae brave and sae braw, man;  
 Ilk Whiggish believer,  
 Ilk privileged riever,  
 Come join in a hearty huzza, man.  
 For they crack, and we tak, &c.

Addressed on the back thus,—

*For Mr Alexander, Sentinel Office, Glasgow.*

## TO THE EDITOR

SIR,

Dumbarton, Dec. 17, 1821.

AFTER the licence which we all have remarked, in the paper devoted to what are called the Whigs, and which, with becoming forbearance, was suffered to pass with impunity, I regret to see, by your paper, that the vindictive spirit of that party has been directed to an article in your paper, and that you are thereby invited to partake of that luxurious boon of the Legislature, a Jury Court Trial.

Much has been said about *personality*, but something may yet be said. If you had been base enough to pry into the *private life* of any *private* individual, and had dragged the result of unworthy research before the public, there are not words adequate to express the reprobation which such conduct must have merited. Of this, however, I need not say that I acquit you; for no one accuses you, and I feel confident that you are incapable of so reprehensible an act.

But while, by the concurrent admission of all men, those who press forward as public men, or notorious men, subject themselves to public animadversion, your error must be in the choice of your subject, and that may be serious or trivial.

You are prosecuted, it seems, by Mr James Stuart of Dunearn, once, certainly, a private individual, but a man now known to us, because he has bustled out of his element. If, therefore, you had held up to public ridicule Mr James Stuart, as an itinerant orator from county to county, and from meeting to meeting, who could have blamed you? Every *public performer* subjects himself to criticism—orators as well as players. Orator Hunt has had it, why should not Orator Stuart? Orator Hunt, after threatening to thrash the *lesser* man, Mr Morley of the British Hotel, showed, in the cant language, the white feather, and *refused to fight him*, and was deservedly stigmatized and laughed at. If Mr Stuart had done this, the parallel would have been perfect.

But, Sir, you are dragged before this purse-squeezing Jury Court, I am told, because, in reliance on the much advocated liberty of the press, and looking to the practice of the Whig papers, and particularly that pure jewel the Scotsman, you have ventured to repeat, what I am also told must have been well known to Mr James Stuart, was as currently the topic of general conversation in Edinburgh as any subject which interests the many, either from its gravity or its absurdity. If I am not misinformed, and if utterance is

publication, he might have selected from coffeehouses, or clubs, some individual whose *dimensions* might have been unobjectionable, (if other circumstances might also be equally so,) and, on that chosen individual, by judicious management, might have rubbed himself again into brilliancy. But he has judged otherwise, and has selected you, MR SENTINEL, for his Whiggish vengeance, and summons you to lists where the winner gains no *honour*, and the loser, though he may lose much, may incur no *disgrace*. Beaten at their own weapons, like discomfited bullies, they are the first to call the watch; and, without inquiry as to provocation, or who struck the first blow, he who struck the blow *that is noticed* must go before his worship.

I approve of the determined stand which you have made against Whig and Radical tyranny over the press; and if, without injuring your proud spirit, I may express regret, I must lament the annoyance and expence to which you are subjected for that which did not originate with you, for you have simply echoed the general talk. As you have stood boldly forward on loyal principles, I feel confident that this law-suit will not damp your energies, that your own courage will bear you through, and that your cause will be supported by many a good friend, against the virulence of a party. I beg leave to offer, as one stud for a sevenfold shield against Whig assaults, my hearty subscription of five pounds; and I shall be glad to hear that there is a goodly increase before a week is over.

I am, Sir, your constant reader,

IGNOTUS.

---

JAMES PERRY, ESQ.

LATE PROPRIETOR AND EDITOR OF THE MORNING  
CHRONICLE.

It has been our painful duty, in common with our fellow journalists, to announce the death of a man, who, for a long period, had so distinguished a share in the political paper warfare of the country. "A generous Briton wars not with the dead." With Mr Perry, as a private individual, who could war? The keenness of invective was confined to his journal, for, in private life, he acknowledged no distinctions of party; and, so late as the year 1820, the writer of this article, whose political opinions were as much in opposition to those of Mr Perry as the two poles



are to each other, passed a happy day at his hospitable table in company with Lord Erskine, who is characterized as one of his earliest friends, and the most sensitive *politi-cometer* could not have indicated one hostile atom of influence. With Mr Perry's early history we have no concern, farther than to remark, that his own prosperous career gives a satisfactory confutation of many of the histrionic declamations which he poured forth against the order of things in this peculiar country. A man of liberal sentiments, and who has ample means for hospitality, always can command good company in London; and Mr Perry had the requisites and the result. He was admitted into the first society,—he was an enthusiastic, although not a very skilful critic in the fine arts, particularly in music, which occupied many an amusing corner in his journal. He was what is called a collector, and had acquired a very pretty library. These pursuits, and the company with which he associated, gave a gentlemanly tone to his newspaper, unless when, from ill health or occasional absence, too much was left to his hack subordinates.

But, in lamenting the death of an amiable man and a celebrated journalist, we have also to lament the death of the *Morning Chronicle*. The *Morning Chronicle* will, no doubt, still be continued, but no longer under his controul, and the controul of his responsibility and character. Scarcely, indeed, has he ceased to breathe, when the entrammelled subordinate, now the acting master, gives a taste of future progress. In the very article on the death of this able journalist, the journeyman scribe poisons the cup dedicated to his Memory with the following observation, which we will not so far dishonour the memory of Mr Perry, who was what is called a constitutional Whig, as to believe that *he* would have permitted to appear in *his Morning Chronicle*. Alluding to the period of the French Revolution, this *New Chronicle* observes,—“It was then that broke  
 “forth that unfortunate schism in the Whig party, which  
 “has had so fatal an effect on the character of the House  
 “of Commons, and which, by destroying its efficiency as a  
 “controul over the servants of the Crown, has thrown  
 “down the main bulwark of our old constitution, and left,  
 “it is to be feared, to the people, no other hope but in them-  
 “selves.”—If this does not give a proper savour of unblushing radicalism, we are no judge of symptoms. But this only increases our regret for the loss of Mr Perry, who raised and sustained the character of his paper; for now, under

the influence of his long exertions, any low scribbler, for a while, may obtain currency for the vilest sentiments, and most reprehensible revolutionary doctrines.

(Addressed on the back thus)

“ Mr ALEXANDER, Sentinel Office, Glasgow.”

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Mr Stuart having found it necessary to examine the writings referred to in the indictment, as well as some others in the hand-writing of Sir Alexander Boswell, the following petition was presented to the Court :

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, the PETITION of JAMES STUART, Esq. younger of Dunearn, Clerk to the Signet, Humbly sheweth,

That the petitioner stands indicted to stand trial at the instance of his Majesty's Advocate, on Monday, the 10th of June, for the alleged crime of having murdered the late Sir Alexander Boswell.

That there are certain writings which are necessary for the petitioner's defence, but which, at present, are in the hands of third parties.

That the petitioner has no reason to think that these persons have any objections to deliver up these writings, but he understands that they rather wish for judicial authority to do so.

That these writings are as follows, viz.

1. A process which subsisted some time ago before the Magistrates of Glasgow, between William Alexander and William Murray Borthwick, printers and proprietors of a newspaper called the Sentinel. In this process, Borthwick was the pursuer, and Alexander the defender ; and its object was, to maintain, or to reinstate the former in the possession of the office and documents of the Sentinel, from which the latter wished to exclude him. The process, and more particularly, the interlocutors which it contains, are necessary, because the fact of the petitioner's having got some of the documents of the Sentinel from Borthwick is specially mentioned in the libel, and it is insinuated, if not alleged, that the petitioner obtained them irregularly. This process is at present, or lately was, in the hands of Messrs Linning and Niven, writers to the signet, Edinburgh.

2. Articles which were inserted in the Sentinel, and which the petitioner wishes to prove, were written and sent



there by the late Sir Alexander Boswell, Bart. and in each of which the petitioner is named or alluded to. The first of these, a letter, bearing to be dated Auchinleck, November 7, 1821, and subscribed Alexander Boswell;—the second article is entitled “Whig Song;” the third is a letter signed “Ignotus;” the fourth is a letter signed “Mark “Tod,” which appeared in the 17th Number of that newspaper; the fifth is an article beginning, “The late Lieutenant James Stuart,” and appeared in the 20th Number; the sixth is an article consisting of three or four pieces of verse, entitled “Valentines,” which also appeared in the 20th Number; and the seventh, a poem, entitled the “Bully’s Lament,” which appeared in the 25th Number.

These papers are at present, or were lately, in the hands of the Sheriff-depute of Edinburgh, having been taken possession of by him in a precognition relative to Borthwick’s affair.

3. A letter written by Sir Alexander Boswell to Robert Maconochie, Esq. lately from India. This letter was written on or about the 24th of March 1822. It makes mention of the petitioner’s name; and it relates directly to the unfortunate affair which has given rise to the ensuing trial. It is at present in the hands of James Balfour, Esq. of Whittinghame.

The petitioner is advised that the instant possession or inspection of all of these documents is absolutely necessary for his defence.

May it therefore please your Lordships, to grant warrant for letters of first and second diligence against the saids Messrs Linning and Niven, writers to the signet, Adam Duff, Esq. and James Balfour, Esq. and against all other havers of the said writings, for enforcing exhibition of the same, to be transmitted to the Clerk of Court, and to be made patent to the petitioner, and his counsel and agents, and that immediately; and to grant commission to the Sheriff-depute or substitute, or any of his Majesty’s Justices of Peace of the bounds, to take the depositions of the said havers, and to cause mark the said writings as relative hereto, and to transmit the same to the Clerk of Court as aforesaid,—or otherwise to do in the premises as to your Lordships may seem meet.

*According to Justice, &c.*

(Signed)

H. COCKBURN.

To the preceding petition the following answers were given in on the part of the Lord Advocate :

ANSWERS for SIR WILLIAM RAE of St Catherine's, Baronet, his Majesty's Advocate, to the Petition of JAMES STUART, Esq. Younger of Dunearn, Clerk to the Signet

This day (5th June 1822) the petition now to be answered was appointed to be answered by the respondent, or any of his deputes, and answers were ordained to be given in before ten o'clock to-morrow morning. By way of implementing that order, a copy of the petition was left at a quarter before five o'clock this evening, not with any of the respondent's acting deputes in the Court of Justiciary, but with a gentleman who is well known to have ceased acting in that capacity for some time past. The respondent knows not why this unusual course of proceeding was adopted, and he only mentions the circumstance as the cause why his answers have not been given in at an earlier hour ; at half after eight in the evening the petition was intimated to one of the Advocate-deputes.

The object of this petition is to obtain a diligence for the recovery of certain papers, the immediate inspection of which is said to be of importance to the petitioner in preparing for his approaching trial.

The writings sought by the petitioner are divided into three classes.

The first set of writings are said to be comprised in a process which some time ago depended before the Magistrates of Glasgow, between William Alexander and William Murray Borthwick, said to have been printers and proprietors of a newspaper called the "Sentinel." This process is said to be in the hands of Messrs Linning and Niven, writers to the signet.

The respondent has no interest to oppose the granting of the diligence for the recovery of this process, but he cannot take upon him to say that Messrs Linning and Niven, who are the agents for Alexander, may not have good reasons for refusing the delivery of it to the petitioner.

The second class of papers specified in the petition are said to be ' Articles which were inserted in the Sentinel, ' and which the petitioner wishes to prove were written and ' sent there by the late Sir Alexander Boswell, Bart., and ' in each of which the petitioner is named or alluded to.' Then follows a specification of seven documents, the first of

which is said to be a letter bearing to be dated Auchinleck, November 7, 1821, and subscribed "Alexander Boswell." Now, the petitioner knows perfectly well that this letter was never inserted in the Sentinel, and that the petitioner is neither named nor alluded to in it. Further, this letter, together with the 2d and 3d writings specified in this part of the petition, are all libelled on in the indictment against the petitioner, as productions to be made against him at his trial, and were ready to be produced to the petitioner according to the usual practice, sending to the Crown Agent. They are now in the clerk's hands, where the petitioner may have access to them. It was, therefore, unnecessary for him to ask for a diligence to recover them. The 5th, 6th, and 7th items of this class of writings are said to be in the hands of the Sheriff-depute of Edinburgh, having been taken possession of by him in a precognition relative to Borthwick's affair. The respondent can hardly conceive it possible that No. 7 should have so come into the hands of the Sheriff, seeing that the petitioner himself states that it appeared in the twenty-fifth number of the Sentinel, which was not published until a considerable time AFTER the investigation and precognition, in the course of which it is said to have come into the hands of the Sheriff depute of Edinburgh. But, in regard to all of these writings said to have been inserted in the Sentinel, and to have come into the hands of the Sheriff in the course of a precognition relative to Borthwick's affair, the respondent cannot give any consent, direct or implied, to the recovery of them out of the hands of the Sheriff. The respondent understands that these documents belong in property to the printer of the Sentinel, Mr Alexander, from whose premises, the respondent is informed, they were irregularly carried away, and who has instituted a criminal prosecution against some of the parties concerned in carrying them away. The respondent knows not whether they are of the hand-writing of Sir Alexander Boswell, yea or nay, but he has reason to believe that the most of them are not, and although he has no right or interest to resist the diligence sought, he does not wish to be supposed to give even a tacit consent to a proceeding which, under pretence of wishing to prove that certain documents are of a certain handwriting, is to give a party access to documents which otherwise he has no right to see, and on which ulterior proceedings may be founded.

The *third* class specified by the petitioner is "a letter from the late Sir Alexander Boswell to Robert Macono-



chie, Esq. lately from India." This letter is said to have been written on or about the 24th of March 1822, relative to the affair which led to the present trial, and to be at present in the hands of James Balfour, Esq. of Whittinghame. The respondent is ignorant of the contents of this letter, but if the petitioner thinks the inspection of it important to his defence, *the respondent* shall not object to his obtaining a diligence for that purpose, but at the same time he wishes it to be distinctly understood, that, in taking this course, he does not, directly or indirectly, admit the competency of the production of that letter in the course of the trial, or that the recovery of it from Mr Balfour will bring it competently into evidence, supposing it to be applicable.

*In respect, whereof, &c.*

(Signed) DUNN. McNEILL, A. D.

The Court pronounced the following interlocutor on the 5th June 1822: 'The Lord Justice Clerk and Lords Commissioners of Justiciary, having considered this petition, with the answers thereto for his Majesty's Advocate, grants warrant for first and second diligence at the petitioner's instance against the persons named and designed in the foregoing petition, and all others possessed of the writings called for in said petition, for recovery thereof, excepting the first, second, and third articles specified at the sixth page of the said petition, which being libelled on in the indictment, are now lodged in the hands of the clerk of Court; and grants commission to Mr Andrew Murray, advocate, to take the depositions of the said havers at Edinburgh, and to be reported on or before Friday next; and ordains the said commissioner to transmit the said depositions and productions made therewith to the clerk of the High Court of Justiciary, sealed up, who is hereby authorized to open the same, and give inspection thereof to both parties.'

The following is the examination which took place in consequence of the preceding interlocutor:

At Edinburgh, the 6th day of June 1822 years;

Compeared ÆNEAS MACBEAN, writer to the signet, who produced act and commission of the High Court of Justiciary, of date the 5th day of June in the same year, in the criminal prosecution at the instance of his Majesty's Advo-

cate against James Stuart, Esq. younger of Duncarn, granting commission to Andrew Murray, Esq. advocate, to take the depositions and receive the exhibits of havers, as therein specified; which the said commissioner accepted of, and appointed William Sutherland Fraser as clerk, to whom he administered the oath *de fidei*.

Compeared ROBERT WILLIAM NIVEN, writer to the signet, one of the partners of Messrs Linning and Niven, who being solemnly sworn, purged of malice and partial counsel, and examined as a haver, and being desired to produce a process which subsisted some time ago before the Magistrates of Glasgow between Alexander and Borthwick, referred to, being the first article in the act and commission, depones, and produces the said process, conform to inventory, with the exception of No. 6, "being copy dissolution of co-partnership," which being necessary to be produced in the hands of the clerk of the Court of Justiciary, in the criminal prosecution presently depending against William Murray Borthwick, he declines to produce now, but will lodge in the hands of the clerk of the Court of Justiciary in the course of this day. All which is truth, &c.

Compeared ADAM DUFF, Esq. Sheriff-depute of the county of Edinburgh, who being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter signed "Mark Tod," which appeared in the seventeenth number of the Sentinel newspaper; an article beginning "The late Lieutenant James Stuart," which appeared in the twentieth number of that newspaper; an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the twentieth number; and a poem, entitled "The Bully's Lament," which appeared in the twenty-fifth number; or which several articles did at least appear in the said Sentinel newspaper, depones, That in the precognition that was taken before the deponent against William Murray Borthwick, different letters, writings, and other documents, were produced by Mr William Spalding, writer in Edinburgh, and delivered to the deponent: That on the 30th of March last, a petition in the name of the Lord Advocate was presented to the deponent, praying the deponent to deliver over, "or direct the clerk of Court to deliver over to the Crown agent," the said writings, letters, and documents; and in consequence the said writings, letters, and documents were, according to the



deponent's directions, delivered over to the Crown agent, and were contained in four parcels or packets, with the relative inventories, and the Crown agent's receipt granted accordingly. And the deponent now produces the said petition, with the receipt marked thereon, which is marked by the deponent, commissioner, and clerk, as relative hereto. And farther depones, That he does not know whether the papers mentioned in the interrogatory were or were not delivered up to him by Mr Spalding, and afterwards delivered to the Crown agent, but the said papers are not in the deponent's possession: That he does not know where those papers are. All which is truth, &c.

Compeared ADAM ROLLAND, Esq. Crown agent, who being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter, signed "Mark Tod," which appeared in the seventeenth number of the Sentinel newspaper; an article beginning "The late Lieutenant James Stuart," which appeared in the twentieth number of that newspaper; an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the twentieth number; and a poem, entitled "The Bully's Lament," which appeared in the twenty-fifth number, or which several articles did at least appear in the said Sentinel newspaper; depones, That he has not these papers, and that he does not know where they are. Depones, That he cannot say but that they might have been in his possession; but that to his knowledge he never saw them. And being interrogated how he explains this? depones, That he had a great many papers in his possession with a view to the trial of Borthwick at Glasgow, but he does not know whether the writings called for were among them or not. Being shown the petition, with the Sheriff's interlocutor, and the deponent's receipts thereon, and interrogated and desired to produce the four inventories therein referred to, depones, That he has not the inventories; but depones, That the whole of the before mentioned papers, together with the inventories, as he believes, were delivered over by him to Mr Anderson, Clerk of Justiciary, and to Robert William Niven, agent for Alexander, at whose instance the precognition mentioned in the act and commission was led; the papers founded on in Borthwick's trial were delivered over to Mr Anderson and the others to Mr Niven; and he adds, that it may be possible he may have returned some of the papers to Mr John Hope,

Deputy-Advocate, but as to this he does not recollect. All which is truth, &c.

Compeared again the before designed ROBERT WILLIAM NIVEN, who, being again solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter signed 'Mark Tod,' which appeared in the 17th number of the Sentinel newspaper, an article beginning 'The late Lieutenant James Stuart,' which appeared in the 20th number of that newspaper—an article consisting of three or four pieces of verse, entitled 'Valentines,' which also appeared in the 20th number; and a poem, entitled 'The Bully's Lament,' which appeared in the 25th number, or which several articles did at least appear in the said Sentinel newspaper; depones, That he did receive a box of papers, relative to Borthwick's trial, from Mr Anderson, Clerk of Justiciary; and he believes one of the papers called for, viz. that beginning with the words, 'The late Lieutenant James Stuart,' is among them, because he sees it mentioned in the inventory appended to Borthwick's indictment: That he has not looked through the said box of papers, and he does not know whether the other papers called for are among them or not: That he also got the precognition in Borthwick's case from Mr Rolland, Crown agent, and some accompanying papers; but he is not aware that the papers called for are among these. Depones, and declines to produce the papers he got from Mr Anderson, having borrowed them on his receipt, and because they are libelled upon as productions in the indictment against Borthwick; but that he will return them to the Clerk of Justiciary before seven o'clock this evening. Depones, That he does not know where the papers called for may be, otherwise than as above deponed to, and that he has not fraudulently put any of them away. Mr Niven adds, that, on going home, he will immediately look through the papers he received from Mr Rolland, along with the precognition; and if he finds any of the papers called for, he will transmit them to the commissioner before five o'clock this afternoon. All which is truth, &c.

The commissioner afterwards received a card from R. W. Niven, stating, that he had looked through the papers alluded to, but had not found any of the writings called for.

At Edinburgh, the 7th day of June 1822 years,

PRESENT,

Duncan M'Neill, Esq. Advocate, and  
Adam Rolland, Esq. Agent for the Crown ; And,  
Henry Cockburn, Esq. Advocate, and  
Æneas Macbean, Esq. Agent for the before mentioned  
James Stuart.

Compeared JAMES BALFOUR, Esq. of Whittinghame, who, being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter written by Sir Alexander Boswell to Robert Maconochie, Esq. lately from India, particularly specified in the act and commission, depones and exhibits the said letter, which, with its cover, is marked by the deponent, the commissioner, and clerk, as relative hereto. All which is truth, &c.

(Signed) J. BALFOUR.

JOHN HOPE, Esq. Advocate, having been present at the examination of Adam Rolland, Esq. which took place yesterday, and, having seen the act and commission, stated, that he would look through the papers in his possession, and, if he found any of the writings called for, he would transmit them to the commissioner. The commissioner afterwards received from him the letter signed "Mark Tod," under an envelope, on which it was stated to be the only paper required which was with him. And it is accordingly marked by the commissioner and clerk as relative hereto.

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The following Defences were, on the 8th June, lodged for Mr Stuart :

DEFENCES for JAMES STUART, Esq. Younger of Dunearn, in the Criminal Indictment against him, at the instance of his Majesty's Advocate.

The pannel is a landed gentleman, and is infest as such. His proper designation is "James Stuart, Esq. Younger of Dunearn."

He is not guilty of the crime with which he is charged.

Acting as he is, under professional advice, he cannot admit that he was the cause of the unfortunate death of Sir Alexander Boswell ; but if it shall be proved that he was,



then he is satisfied that it will appear to the Court, and to the Jury, that his concern in that affair was excusable and unavoidable. He had received repeated and unprovoked insults from that gentleman. These appeared in the form of very offensive and unjustifiable articles, written and published by him in the Sentinel newspaper, consisting chiefly of an article entitled "Whig Song." Another article being a letter signed "Ignotus;" an article signed "Mark Tod;" and another article entitled "The late Lieutenant James Stuart." These publications charged the pannel with crimes and qualities which are intolerable to a gentleman; and they were aggravated, when taken in connection with certain similar articles which had appeared recently before in a newspaper called the Beacon, and which formed the groundwork of Sir Alexander's publications.

The pannel was guilty of no offence or irregularity in the mode in which he discovered that Sir Alexander Boswell was the author of these calumnies; but, on the contrary, obtained the evidence of his accession to them fairly from a person who he believed was entitled to give possession of the documents which proved it.

Sir Alexander himself was conscious that the affair in which he is said to have unfortunately fallen, had been rendered inevitable by his own conduct.

The charges of malice against that gentleman—of a determination to provoke him or any of the other lieges to fight with the pannel, and of absconding from justice, are all utterly denied.

The pannel has given in a list of witnesses, and a variety of documents, to prove his defence, by proving the circumstances on which he acted; and, however deeply he deploras the melancholy event which has occasioned this investigation, he is satisfied that, if he be tried by his peers, he cannot be found guilty of any crime.

(Signed) H. COCKBURN.

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# TRIAL.

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*Monday, June 10, 1822.*

PRESENT,

The Right Hon. DAVID BOYLE, *Lord Justice Clerk.*

LORD HERMAND.

LORD GILLIES.

LORD SUCCOTH.

LORD PITMILLY.

(LORD MEADOWBANK did not attend.)

*Counsel for the Crown.*

Sir WILLIAM RAE, *Bart. Lord Advocate.*

JAMES WEDDERBURN, *Esq. Solicitor-General.*

Mr DUNCAN M'NEILL,

Mr ROBERT DUNDAS,

} *Advocates Depute.*

ADAM ROLLAND, *W. S. Agent.*

*Counsel for the PANNEL.*

Mr FRANCIS JEFFREY.

Mr JAMES MONCREIFF.

Mr JOHN A. MURRAY.

Mr HENRY COCKBURN.

Mr JOHN CUNINGHAME.

Mr THOMAS MAITLAND.

Mr WILLIAM GIBSON.

ÆNEAS M'BEAN, *W. S. Agent.*

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THE PANNEL took his place at the Bar, accompanied by his relatives the Earl of Moray, Mr Erskine of Cardross, and Captain Alexander Gordon of the Royal Navy, and by the Honourable Admiral Fleming, &c. &c.

The Prince Czartoriski, Lord Belhaven, the Honourable Henry Fox, and several other persons of distinction, sat on the Bench with the Judges.

The instance being called,—

The LORD JUSTICE-CLERK, as the presiding Judge, thus addressed the Pannel :

JAMES STUART, pay attention to the Indictment against you at the instance of his Majesty's Advocate, now to be read.

The Indictment or Libel was then read over by the Clerk, Mr Stuart standing up.

LORD JUSTICE-CLERK.—JAMES STUART, what do you say to this Indictment?—Are you Guilty or Not Guilty?

Mr STUART—My Lord, I am Not Guilty.



Mr COCKBURN spoke as follows :

MY LORD,—WE do not intend to state any objection to the technical style of this indictment. It is drawn in rather a peculiar form, and contains statements and expressions which, we think, might have been spared, with some respect to private feeling, and no detriment to public justice. But still I am not aware that it is liable to any objections of a legal kind; and I must add, that, even though it were, these objections would require to be of no ordinary description, before the Gentleman at the Bar would allow us to state them, or to throw any obstacle in the way of a complete and full investigation of the truth, which has been his only and most earnest desire, ever since the unfortunate affair which made such inquiry necessary.

But though we have no objection to the technical relevancy of the libel, this is one of those occasions, on which it is the duty of the pannel \* to avail himself of his undoubted privilege, of beginning the business of the day by such a statement of facts, as may enable the Court to judge of the bearing and relevancy of his defences. And we think it the more necessary to give this statement now, because this is a proceeding which involves considerations to the party far dearer to him than his life,—and your Lordships know that there are a variety of accidents which, before he may have an opportunity of bringing them forward again, may make the trial on the part of the Public Prosecutor break down. And therefore it is, that he thinks it right to avail himself of this opportunity of stating his defences, in the same way as the law gives an opportunity to the Public Prosecutor of stating his charges. And though the statement which I am going to make at present must necessarily be addressed to the Court, I hope that I am guilty of no impropriety, if I mention to the gentlemen summoned as jurymen, that it is partly intended for them; and that, as no one of them can tell but that he may be one of the persons who may be obliged to try the case, they will indulge me by attending to the explanation which I am about to give.

This indictment sets out by stating, that Mr Stuart had conceived *malice and ill-will* against the late Sir Alexander Boswell, and that, under the operation of this passion, he had formed the unlawful *design* of challenging that gentleman. So far all is consistent. Because having malice against this

\* A name given in Scotland to the prisoner.

particular individual, it is at least possible that he should have formed the unlawful design of challenging that man. But, by a species of reasoning of which we cannot well comprehend the meaning on this side of the bar, the indictment goes on further to state, that, having special malice against that gentleman, *and no malice against any body else*, he not only formed the design of challenging Sir Alexander Boswell, but *others of the lieges*. And then, apparently for the purpose of showing that he was maliciously going about, in search of causes of a quarrel, the statement is, that he repaired "to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, *and in the lawful possession and custody of the said Robert Alexander*; and the said William Murray Borthwick having been liberated from jail, *as arranged and concerted by or with you*, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow, sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the 'Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or *pretended to have found* among them, some writings holograph of the said Sir Alexander Boswell, you did *wickedly and maliciously* challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday, the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, *wickedly and maliciously* discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right

side, and shattered the collar-bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you, the said James Stuart: And you, the said James Stuart, conscious of your guilt in the premises, *did abscond and flee from justice.*"

Now, all these collateral and extraneous statements, apart from the mere fact of the duel between the parties, are pointedly and most solemnly denied. I do not merely say they are statements which cannot be proved by legal evidence. They are statements for which there can be no moral evidence. If the light of Omniscience were let down on this affair, it would only show more distinctly, that the gentleman at the bar had *no* malice against Sir Alexander Boswell; that he did *not* seek the ground of a quarrel with him; that he was actuated by *no* conscious guilt; that he did *not* abscond, or flee from justice.

With respect to the other fact, by which the death of the unfortunate gentleman, now no more, was caused, if I were permitted to speak the sentiments of my client and friend at the bar, I would freely admit that that person met with his death at the hand of the prisoner. But I am not permitted to make here those candid and generous avowals which the prisoner would utter; and, therefore, acting as his counsel, though I do not anticipate that there can be the slightest doubt with respect to the fact on which this indictment mainly rests, we do not formally admit it. We call on the public prosecutor to prove it; and we do so chiefly in order that we may have the benefit of those explanatory circumstances of which otherwise we might be deprived. Accordingly, I beg that, in what I am going to state henceforth, what I say as to the catastrophe of this affair, may be always taken as an assumption, and not an admission. But, assuming the facts, this opens up the great question, Has the gentleman at the bar any legal apology for that effect of which he thus has been the cause?

I say that he has; and I shall proceed to state the circumstances on which we found the defence, that he is not guilty of the crime set forth in the libel.\* But I cannot enter on this statement without most earnestly begging the protection of the Court, and the forgiveness of the Jury, when I say, that I feel myself constrained by two great disadvantages.

In the first place, it is one of the unfortunate circumstances of this affair, that it is connected with topics of a public and party nature, which are most unfitted for the

\* This is the technical term in Scotland for the indictment.



calm deliberations of a court of justice, and which can scarcely even be alluded to without exciting great prejudices and irritation. But I declare, that I act at present under the most severe restrictions on myself, not even by reference, to go into those matters one iota beyond what is absolutely necessary for the bare understanding of the case. And if, in the course of this discussion, I should appear to trench upon subjects which cannot, however slightly, be alluded to without almost dethroning reason, I pray that this may be ascribed to the necessity of our situation, and not to our having the remotest desire to excite a prejudice of any kind whatever,

The other consideration is of a far more painful and more delicate nature. It is another grievous misfortune in this case, and one which the gentleman at the bar feels more poignantly than any stranger can, that justice cannot be done to the living without seeming to encroach on those charities which are due to the dead. I wish I could avoid this topic too, and that we could pass through the business of the day, without casting even a shade of doubt on the memory of one whose unfortunate loss has occasioned this discussion. I am afraid that we cannot. But I trust that your Lordships will go along with me, and keep it always in remembrance, that, if we shall be obliged to charge that person with impropriety, we are most willing to ascribe it to indiscretion alone. And, I scarcely know whether I ought to say I am sorry or that I am glad, that there is a circumstance to which, in consistency with this explanation, his conduct may be attributed. Sir Alexander Boswell was known to be gifted—a fatal gift, when not combined with consummate prudence and the happiest temper—with great ironical powers; and I am sure I ask no more than what his best friends will allow, when I beg that every thing on his part may be ascribed to that propensity which all men have, to exert those peculiar powers on which they have staked either their reputation or their pleasure. I am certain that, in our conduct of this case, there is at least one restriction which we shall impose upon ourselves, which is, that every word which we say shall be strictly true. And surely he is no friend to the memory of a person deceased, who thinks that the lustre of that memory can be increased by concealing the full disclosures of truth.

Under these two difficulties, let us see what are the real facts. The first I shall state is one, for which I have the authority of all present, that the prisoner is a man of unimpeachable character, and in the station of a gentleman. No



man, who knows where the delicacies of this case lie, can fail to perceive the relevancy, in strict law, of what I now say; and accordingly, in every question where an appeal has been made to the laws of honour, the circumstances of the parties making the appeal, with reference to profession, with reference to rank, with reference to temper, have been laid down by the greatest judges as most material ingredients in the case.

Now, though, in this indictment, he is styled, we think somewhat unceremoniously, '*James Stuart*,' those who drew it might have known that he was directly connected by blood with some of the noblest and most ancient families in the land. He is a first cousin, once removed, of the noble family of Reay. He is very nearly connected—the precise degree is immaterial—with the noble families of Buchan, Melville, and Cardross, and several others. But I need say no more on this part of the case than that he is lineally descended from that great statesman whose history adorns the name and the house of Moray.\* Failing the family of the last Earl, the father of the gentleman at the bar would have inherited the honours of that illustrious house; and, accordingly, I perceive at this moment that he is supported, in this his day of tribulation, by the present possessor of the honours and fortune of that family, who has chosen to forego the privileges of the peerage, which would have given him a place beside your Lordships, and with great manliness and good taste, has rather preferred to sit at the bar with his relative and his friend.

Nor is the personal character of the prisoner unworthy of these high and hereditary honours. This is a theme on which it is far better for the witnesses to speak than for me. But I must say, that if it fell to the lot of any person to be reduced to the necessity of proving his personal character, there is no man beyond these walls,—aye, there is no man within them—who could get a more beautiful character, from a greater number of disinterested and spontaneous witnesses,—all tendering their services, from the ranks of his political adversaries, than will be given to the gentleman at the bar. I am not going to bring forward the public thanks which he has got again and again from the public bodies whose business he has done. But the special point of his character to which I would chiefly call your attention is, that

\* This, we believe, was an allusion to the Regent Murray.

he is distinguished by a total absence from those propensities from which quarrels like this in general arise. If he has any quality more distinguishing than another, it is that of peacefulness; and your Lordships will hear it mentioned in evidence, that on every occasion on which his assistance has been required, he has been the certain and successful peace-maker; and that, if he is now charged with imbruing his hands in another's blood, he has more than once been the man who has prevented similar calamities under similar circumstances.

Now, it is perhaps not unknown to some of your Lordships—it is sufficiently notorious to every body else,—that, in the beginning of January 1821, a newspaper was established in this city called the *Beacon*. With the general merits of that publication, either with respect to other subjects or other men, we have nothing whatever to do. But on a particular occasion, almost exactly a year ago, that paper contained a gross personal attack on Mr Stuart. The terms of that attack, the propriety of it, the meaning of it, I don't care about here; I rest on the mere fact, that he was attacked, and that that affair was settled between him and a person of the name of Stevenson. How these two settled it, is perfectly immaterial. But it was settled. Some persons I have heard doubt the judgment or good taste with which the matter was set at rest by Mr Stuart. With this I have nothing to do: I have only to say, that he had the highest authority for what he did. But let it be right or let it be wrong, settled it was. The fact is, it was terminated and adjusted, and both parties were bound over to keep the peace. This happened in the month of July 1821.

Now, after that affair was over, sure am I that no *stranger* had a right to take up that quarrel—that no man, not a party to the business, particularly if living at a distance, had a right to adopt it, and treat the gentleman at the bar with ignominy. Sure indeed am I, that, with regard to Mr Stuart, boasting, as he did, of the friendship, and walking every day arm in arm with the most respectable men, and in the confidence of every eminent character, nothing had occurred to make him a common butt, at which every person in the street was entitled to level his insult.

Nevertheless, there appeared in that paper a series of other attacks, which, for his own sake, I wish the deceased had never seen, because I shall show how *he adopted them*. But there did appear a series of attacks, couched in language which

is a disgrace to our age, and the use of which, on this and other occasions, has created unheard-of dissensions among the inhabitants of a place, who formerly were singularly united in all the bonds of citizenship. I am almost ashamed to mention the language of these attacks,—language for which, I confess to your Lordships, that, till I was professionally obliged to degrade myself, by seeing the work in which it appeared, I did not think there were to be found readers, or even printers, in this land. But I find that Mr Stuart's name was directly coupled with the word *dastard*—with that of *bully*—*sulky poltroon*—*coward*—*despised*.

He reckoned these outrages a mere provocation to fight, *given on the part of the same persons with whom he had been bound over to keep the peace*. He therefore applied to the same Judge by whom this step had been taken, the Sheriff of Mid-Lothian; and without having recourse to measures of personal revenge at all, he asked for protection, as will be sworn to by that respectable Judge this day, by means of summary interdiction, or otherwise. But he was told that no redress in that form could be got—that, *because these provocations to fight appeared in a public newspaper*, as to which he was bound over not to retaliate, the Sheriff could do nothing—he would otherwise interfere with the liberty of the press!!! I am far from presuming to question the propriety of this learned person's judgment; but *what was its effect upon Mr Stuart?* He saw himself set up as a target, at which every base libeller might shoot, and when he applies to legal authority for protection, the answer is,—Protect yourself; I will give you none; at least none, which, from its being summary, is the only one of which the case admits.

Well, he submitted to this—to him most heavy judgment. For about a month or six weeks he submitted to slanders, which I would speak falsely if I said that he did not feel. He felt them to the quick, though no man but himself could have borne them with his patient courage.

However, that and other similar events brought the career of the *Beacon* to a close. And now another great branch of this history begins. That newspaper came to an end, and no continuation of it was set up in this place. A fair occasion was thus given for every human creature abstaining from touching Mr Stuart. Every man of good temper and good taste was thankful for this; and a common sentiment of satisfaction prevailed, in the belief that we had



once more returned to our ancient state of good neighbourhood and friendship.

But, in spite of this most tempting opportunity to have done with this affair, a newspaper, called the *Sentinel*, was set up in Glasgow,—in a different city, by different men, under different auspices—men with whom Mr Stuart had had no quarrel—no concern—no connection. Yet, in the very first number of this paper, all the previous calumnies against Mr Stuart are purposely and deliberately adopted. In that very first number, I find it said of a gentleman, who has in his veins the purest and noblest blood in the country, and who at that moment was admitted to the society of as large a circle of friends as any man can boast of,—that he had *dishonoured the blood and the name of his family*. I find him accused by name of *meanness*, and called a *heartless ruffian*; and there is applied, not indirectly, but broadly, and without evasion, that intolerable word *Coward*, an imputation which, when it can be borne quietly, the character of a British gentleman is gone.

Mr Stuart, though he had failed in the first application which he had made to the laws of his country, was not discouraged from making another. He was advised, not for the sake of paltry gain, but for the purpose of showing that he was resolved to resist that torrent of abuse of which we have seen the first fountain, to raise an action of damages; and, accordingly, *before another number of the paper* was published, he had a summons concluding for damages executed against the known editors of the paper. He gave in a condescendence (being the technical term for a specification) of the facts complained of; and in the answers to that condescendence, he was, plainly and openly, in a court of justice, twitted, *because he had not fought*. \* *The last article of this answer contains an appeal to men acquainted with the laws of honour*; and his civil rights were thus attempted to be prejudiced by a reference to those very laws, for observing which, he has the misfortune of now standing where he does!

He thus saw that even an appeal to the laws of his country was not to save him from renewed and aggravated insult. Because, even when humbly mendicating bare justice from a court of law, it was to be got only under those

\* See Extract from the *Answers* for Robert Alexander, &c. in the *Appendix*.



odious allusions which human nature must be changed before it can bear.

This summons had not the effect of checking the continuation of these statements in the *Sentinel*. They went on; and I am now obliged to come a little nearer to the deceased, by stating, that they went on apparently with a keener spirit, and under an abler hand. Several articles appeared, of which the Jury will hereafter hear more particularly. Some of them are mentioned in the indictment. Who the author was, we shall speak of immediately. But there appeared among others an article, entitled "*Whig Song*;" a letter signed "*Ignotus*;" a paper beginning "*Lieutenant James Stuart*;" and one having the name of "*Mark Tod*." \* There were several others besides, but what we have to do with at present are these four.

At the period I have come to, Mr Stuart did not know, *nor had he any suspicion*, who the author of these articles was. He and every body else was satisfied that they were not the productions of the printers, but that they came from some person who had not only that spirit which gives sarcasm its edge, but a few of those powers which give it its lustre. Accordingly, every one of his acquaintances saw how deeply they had sunk into his bosom, for *in every one of these articles the word coward is directly applied to him*. These arrows struck the mark for which they were intended, and they cleft that heart they were directed against, though the quiver from which they came had not been discovered.

If any thing could have added to the greatness of this injury, and to its irreparableness, it would be certain other facts which about this time came to the knowledge of Mr Stuart, and satisfied him, that this newspaper, set up as it was in a provincial town, was not entirely left to the support of provincial men, but that it received the countenance of *certain persons of higher station*—a fact which I state for no other purpose but that of showing, that greater injury was thereby done to Mr Stuart,—because he was so placed, that there were few houses he could go into without the chance of having his eyes fixed upon a paper in which the word Coward was applied to him.

At last, after suffering under those attacks for a considerable time, that unfortunate day, (as, in any view, I may call it,) arrived, in which the author of these calumnies was to be detected. The papers were found in the office of the Sen-

\* The two first of these articles are annexed to the indictment; the other two will be found in the *Appendix*.

tinel; and it is made part of the direct charge against Mr Stuart in this indictment, though, whether by insinuation or not, we cannot very well understand, that he got these papers *improperly*. Now, as I know that prepossessions exist on this subject, I am most anxious that the real state of the fact should be understood, and seen so plainly, that he who runs may read. For this purpose, it is not necessary to go into many details. The leading facts can be explained at once, and the statement which I am now to give, I know the evidence will confirm.

Mr Stuart, one day last March, was walking in the adjoining hall, when a person came up to him, and *got himself introduced as the private country agent of William Murray Borthwick*, the editor or printer of the Sentinel. This gentleman Mr Stuart had never seen in his life before; scarcely ever since; and the statement made was just this:—‘Borthwick is alarmed for his pecuniary safety; you have an action of damages against him; the Provost of Hamilton has two actions of damages, and others of the same kind are threatened. He wishes to do that which is always the right and duty of a printer to do, to serve himself by giving up the author.’ The answer made to this proposal by Mr Stuart was the very same that was made by other two gentlemen to whom a similar intimation was conveyed. It was in substance this—‘We are ready to go to Glasgow to save farther time, and if you give us the documents, we shall consider of your proposal. But we make no bargain; only, we want the author,—we don’t concern ourselves with the paltry printer.’

Mr Stuart did not wish to go to Glasgow. The proposal indeed was, that one of the other two gentlemen should go. But they were prevented by accident, and he went himself, and he got the papers in question. But, in the *first* place, (for I have two facts to state in connection with this part of the business,) *he did not know* that Borthwick—assuming Borthwick to have had no right to give up the papers,—had no such right. In support of this, I have a witness against whom the prosecutor cannot object, I mean the Public Prosecutor himself. For what does he state in the indictment? That Mr Stuart went to Glasgow, and got the documents;—*but it is not ventured to be laid, that Mr Stuart knew that these documents were in the legal possession of Alexander.*

Therefore, on this point of the case, it appears that Mr

Stuart just did what any calumniated person would do, saying to the parties concerned, "I don't want your money, give me the author." He did what is usual in every case of stolen property, and which cannot be wrong in the stronger case of stolen character. Had he offered a reward of a thousand guineas for the author; nay, had he added, that if any person gave information, *no questions would be asked*, he would only have been doing what any man of spirit would have done. And what I would ask would have been said if he had *not* adopted this course of conduct; if he had hesitated about taking it? I know it well. I have the authority of all the past and after numbers of this paper, which leave no doubt what construction would have been put upon his conduct. "*You are the coward, the bully, the mean man, the heartless ruffian, the white feather, the man afraid of lead, the man afraid to draw a trigger, the poltroon we called you; you talk of your character;—but you want a little money, it seems! because, when we put you in the way of getting honourable redress, you betake yourself to a civil action of damages, and let the author alone.*"

Mr Stuart, accordingly, took these papers, and it will be a strange circumstance if he should be thought wrong in doing so, when I am ready to poll the bar, from which I am confident that there is not one man out of twenty who would not, both professionally and personally, say, that it was not merely his right, but his duty, to take them.

But I have a great deal more to say before leaving this point; for when I plead, that our defence on this matter is, that *he did not know* that Borthwick was not entitled to give up these papers, I am supposing that, in point of fact, Borthwick was not so entitled. But I now say that, on legal grounds, *Borthwick was entitled to give them up*. The fact on this point can be very clearly and speedily told. Borthwick and Alexander were printers and proprietors of this paper; but at a particular time, and before Mr Stuart went for them, Alexander had proposed that Borthwick should go out of the concern. Borthwick agreed to this, but it was *conditionally*, and one of the conditions was, that a sum of money should be paid to him. On the faith of this future and prospective condition, which ought to have been fulfilled *within a limited time*, Borthwick very foolishly signed the dissolution of the firm, and put it in the hands of Alexander; but of course, it was understood that it was not to be used *unless the conditions*



*of the bargain were fulfilled.* But Alexander, instead of waiting to fulfil the conditions, and pay his money, chose, most illegally and dishonestly, to publish the dissolution of the copartnership in the Gazette, and this in order to perform the trick of ousting his partner, and yet keeping his cash. On this Borthwick made an application to the Magistrates of Glasgow, praying that he might be reinstated in the office, unless his money was paid;—*and the Magistrates pronounced a judgment, that if the money were not paid within a certain time—eight days,—Borthwick should be entitled to resume possession of what was his own.* The eight days were allowed to elapse, and the money was *not* paid. Borthwick did not instantly run to take possession on this. He waited a considerable time further—about a fortnight, *till the interlocutor was eight days final*, and a sufficient time had passed for advocating to this Court,—and at last, seeing that no money was to be paid,—that there was to be no petition,—no advocacy,—he went and resumed possession of his premises. *He was in possession for a whole day.* His associate in the office was Alexander, and no attempt was made to dislodge him.

To be sure Alexander, seeing that his partner, who was less disposed than himself to be libellous, was thus reinstated, had recourse to a *manœuvre* to get him out of the office. On an *old* caption, and for a debt *not* due, he caused him to be hurried to prison, and there he lay for eight days. Now, it was while he was thus in prison that the communication mentioned was made to Mr Stuart, and Alexander having thus crippled his partner, and defeated the interlocutor of the Magistrates by his illegal violence, was not idle in the meantime. Borthwick had in the office his own repositories, desks, and drawers. *All these it pleased Alexander to break open*; on all of these he put new locks; for the very purpose of making him sure that when, by the operation of the law, Borthwick should be relieved from prison, he should not get access without having again recourse to the Magistrates.

It was in this situation, when the legal rights of this man had been defeated by a piece of illegal violence, that Mr Stuart found him when he came to Glasgow. But observe,—I beg your Lordships will observe,—*Mr Stuart had no connection with Borthwick, directly or indirectly.* He had no connection with the story which I have now been telling you. He had nothing to do but to deal with Borthwick as the *apparent* proprietor, and to take the papers. He did not, as



the indictment says, liberate Borthwick from jail. Borthwick was liberated by payment of the L. 50 for which he had been imprisoned, but not one farthing came, directly or indirectly, from Mr Stuart. It was paid by Borthwick's private agent, as a part of his general business, and Mr Stuart had no more to do with it than the child unborn.

Therefore, the second remark which I have to make is, that, if the propriety of Mr Stuart's conduct depends on the fact of Borthwick's being entitled to do what he did, then his conduct was perfectly proper, for Borthwick was so entitled. He was the legal custodian and administrator of the company papers; and though he may not have been entitled to *give away* the company property, yet, as administrator, he was entitled to prevent the company and himself from being ruined by actions of damages. He was entitled to *exhibit* the papers for this purpose.

Mr Stuart thus got the papers innocently.—But from that day till this, he has felt the weight of the discoveries which he then made. For though I believe he would rather have given his life than have made the disclosure which he did, against a gentleman with whom he was somewhat related,—with whom he had never been but upon good terms,—whose talents he had always admired; nevertheless, the melancholy truth was discovered, that his half friend, *Sir Alexander Boswell, was the author of the worst calumnies against him.* He discovered enough to make himself satisfied; and I shall have no reliance on evidence henceforth, if the Jury be not satisfied that Sir Alexander was the author of that "*Whig Song*,"—of the letter signed "*Ignotus*," and of two or three other productions, in every one of which,—I do not say from malice,—I hope it was not from malice,—but from the sportiveness of an idle fancy, *he does apply the term Coward to the name of Mr Stuart*, without ever having received any provocation, or the smallest pretext for doing it.

For, observe, that these were statements made by Sir Alexander Boswell, against a gentleman who had formerly never written or spoken a word but in respect of him. I know it has been said, and I am sure there are persons here who must take the remark, that Sir Alexander's conduct had some extenuation from his having been the object of a previous publication in a different newspaper by Mr Stuart. I am most willing to let him have the benefit of that extenua-

tion, in so far as he can have it, for a sincere and honest *belief* on his part, that that was the case ; but he was completely misinformed. If he ever got such information at all, *he was misinformed*. Mr Stuart is too much of a gentleman, and possesses too much mildness of character, to be guilty of anonymous publications against any individual. He never wrote one single word against, or about, Sir Alexander Boswell, nor had he, for two years before, written one syllable in the paper which I know has been referred to, except one slight discussion about the particular direction of a Ferry on the Frith of Forth.

So that Mr Stuart found himself here in very extraordinary circumstances indeed. He had now suffered such wrongs, as no gentleman in this country is ever affected to submit to, and he had seen all these insults adopted and aggravated in the Sentinel. Yet he found a letter from Sir Alexander Boswell, subscribing a sum of money to defend the Sentinel ; in other words, to defend that very defamation for which the Sentinel was prosecuted ; and then he found all the previous wrongs levelled at his head, on the authority of no base scribbler, but of a man, not quite his equal in family to be sure, but fully his equal in public station. What was—what could, Mr Stuart do after this ? Was he to submit quietly ? Was he not to speak ? Was he to huddle up these papers, and go about the world with his diminished head marked with the word Coward ? No—he did what, (with the exception of the Bench,) there is not a man in the kingdom who would not have done. He called in the advice of able and honourable men. In particular, the advice of one relative and friend, a nobleman, whose interference has proved a mighty blessing. The Earl of Rosslyn, on seeing these documents, saw at once that there was but one course to be followed. He left a message for Sir Alexander Boswell, stating that he wished to see him. After the lapse of several days (for Sir Alexander was then in London) he came to Edinburgh, and an interview took place between them. At that interview Sir Alexander was attended by another gentleman, whose judgment and amiableness of disposition made him a worthy confidant on such an occasion. Mr Douglas and the Earl of Rosslyn met with Sir Alexander Boswell,—and *I pray the Jury to observe what the terms were that were then offered to Sir Alexander*. Why, if Mr Stuart had been the bully and ruffian he was called, like a beast he would have rushed to the combat, and insisted that his wrongs should be positively and instantly wiped out with the blood of both, or one of them. There are men, and these amiable

and honourable men too, who have been unquestionably hurried into this course. But Mr Stuart, putting down, as he is thus proved most effectually to have done, the calumnies which had been launched against his temper and heart, was perfectly temperate and moderate. He who had suffered wrongs which made life intolerable, was yet willing to retain his life, and leave his antagonist the possession of his and of uninjured honour, by making two propositions, one of which it is my astonishment that Sir Alexander did not accept.

They had evidence of his accession to these calumnies, as being the author of them, and yet when they were exhibited, he was told, in the *first* place, that *if he would deny* that they were his, his simple assertion would be taken as conclusive against all evidence whatever; he had but to say, *They are not mine*, and Mr Stuart and he would have shaken hands together. But he did *not* say they were not his,—I wish he could have said so; but he was a gentleman, and he knew he could not say so truly. He distinctly *admitted the authorship* of that song, which was selected for the sake of simplicity, as the ground to be taken up. He admitted that song over and over again. He thus stood before a gentleman, who was his equal in every respect, confessing to him “I have called you a coward.” Yet another proposal was made to him—“Let us take it, Sir Alexander,—let us take it *as a mere bad joke*.” “We are willing to take it in this light. Say but that you are sorry for it; that it was a squib; and that you had no serious intention of impeaching the honour or courage of Mr Stuart.” I am sure that was a proposition as mild as the greatest peace-maker could possibly have made, and it was a proposition to which the party *might have acceded without the slightest imputation on his honour*. For who can imagine that Sir Alexander would have been impaired in the estimation of society by acknowledging, on this occasion, that the whole *was an idle sarcasm*? Yet that *satisfaction he refused*. He said, I cannot submit to be catechized. I will make neither denial nor apology.

Now, was a meeting possibly to be avoided after this? On this matter we have the testimony of the Earl of Rosslyn, a person not accused of violence of disposition of any kind. We have more. We have the authority of Mr Douglas, who was chosen as his friend and peace-maker by Sir Alexander Boswell himself. These gentlemen will tell you, that they held a meeting to be absolutely inevitable. No legal, no moral, force could prevent that catastrophe. But there is a third witness as to the necessity of this, who renders it quite



unnecessary to speak of the conviction that arose in the minds of the mutual friends. *Sir Alexander himself* has left evidence behind him, which explains what *he* thought of this matter, and its character is unequivocal.

It seems that at the very time when he was writing these papers, his heart misgave him.—He knew that he was doing what was rash, and might give offence ; and, accordingly, he left orders, as we shall prove, at the newspaper office, that they should immediately be destroyed. At the same time, having still those indestructible feelings of gentlemanlike accountability, which form the defence of Mr Stuart, he adopted the course that the Beacon had pretended to adopt before him, of leaving this additional direction at the office, that, if any one wished to come to him for what he had written, *demanding personal satisfaction*, his name should be given.

What inference are we to draw from this proceeding, except that, in concocting and publishing these lampoons, he was aware that he was levelling shafts which would strike some person who *must* call him to account ?

It has been said that the calumny was not his. We shall endeavour, however, to prove that it was. Nay, that he even went the extraordinary length of concealing his penmanship, or of employing another person, to write that libellous production—the offensive song. I trust this is not true. But if it be, what fact can be more conclusive, than that he, a gentleman, should have written or composed that which he felt had to be concealed under a disguised or stranger hand ?

When Sir Alexander first heard of the discovery of these papers, or rather when he came to Edinburgh after their discovery,—I mean, on the 23d of March, when he received a message from Lord Rosslyn, telling him that he wished to see him upon Monday—I pray you to observe what he did,—*I mean before he knew what the object was of Lord Rosslyn's message.* Lord Rosslyn merely said, that he wished to see him, without mentioning either why, or for whom. Yet at this very moment, on Sunday the 24th of March, he wrote a letter to a gentleman of great respectability, a friend of his in London, Mr Robert Macnochie, stating, that he had received a message from the Earl of Rosslyn.\* He stated that he did not know what it was about, but he had no doubt it was *about these squibs*, and that whoever complained, he was determined to give a meeting.

\* See Appendix.



And his conscience went a step farther. For he added, that he would do this, *even though the inquirer should be Mr James Stuart*. That is, before he knew, by any communication from Mr Stuart, that he was speaking of him, or thinking about him, he was aware that he had given Mr Stuart cause of offence, and accordingly prepared for that rencounter, which he knew to be inevitable, by asking Mr Maconochie to be his second. On the evening of the same day, or soon thereafter, *but, at any rate, before he knew what the message was to be about*, he prepared himself with another friend, that most excellent gentleman who attended him to the field; and to him he made the same statement, saying, he did not exactly know what article the message was to be about, but that he should not wonder if it were to be this, *and then recited the two offensive verses of the Whig Song*.

Not only so; but, at the time of the interview which I have mentioned, and on going to the field, he very distinctly stated, what virtually absolved Mr Stuart from all blame, by saying, in plain terms, that he held the meeting to be the consequence of his own fault, *and to be altogether inevitable*.

Nay, there was a particular time in the history of this transaction, in which your Lordships will find, that Mr Stuart and he were bound over to keep the peace; and when the officers were conveying him to the Sheriff's Office, he made use of expressions to them which I do not pretend to repeat. But the import of them was, that the officer might just as well allow him to escape, because no binding over could prevent a meeting; and that, if they did not settle this matter by risking life, *he and Mr Stuart could not live together in this island*.

I have, therefore, the two seconds, and not only these, to which great weight must be attached, but I have the opinion *of the deceased himself*, to which I attach conclusive weight, in evidence of the inevitableness of this meeting.

The affair being thus resolved upon, I need not state at any length its details, or rather I need not mention them at all. This case is, and must be, utterly devoid of those aggravations, which sometimes are to be found in personal quarrels; every thing was, and must have been, done fairly. We have acting for Mr Stuart, a nobleman, whose name, whose character, whose profession, and whose age, is itself a guarantee that nothing could be done, but with the most consummate prudence, gentleness, and propriety. We have for the other, Mr Douglas, who, though a novice—long may he continue so—in these affairs, has conducted himself

throughout, not only with the noblest fidelity to his friend, but with the most admirable candour and generosity towards his friend's antagonist. These gentlemen being present, is evidence conclusive to all the world, that, let what else be wrong, the duel was fairly fought.

I am sorry that I am obliged to add any thing about the views of the principal in approaching the fatal field. But I am bound to state, as I see it has been relied on in analogous cases, that Mr Stuart saw his antagonist making preparations, which he was bound to interpret as of the most deadly character. I am not insinuating that in this Sir Alexander was wrong. But the fact is, that he first proposed that the affair should be on the *Continent*, and in that singular and invaluable document in which he has expounded his views—the letter, which, as I mentioned before, he wrote to Mr Maconochie, he expressly says, that the reason why he wished to go to the Continent was, that he was about to do a deed, for which the operation of the British law might be inconvenient. “*If,*” says he, “*I should be the successful shot, I should not like the after proceedings of our Courts of Justice.*” The resolution of fighting, and the consequence of thus fighting *fatally*, was still adhered to, though the intended scene of action was changed, and after it was resolved to fight in *England*; because it is proved that he resolved to fight there, in order solely to avoid the subsequent operations of justice. And when at last he agreed to fight in his native land, he did so with no altered intention in this respect; but because he was advised *by a legal friend* that *he would be safer in the hands of the Lord Advocate, than in those of an English Grand Jury.* \*

Accordingly Mr Stuart took it so. He made his preparations *for death*. Every thing was done that a man certain of never seeing another sun could do. I am as certain as I am of my existence, that when he stepped from his carriage to the field, he firmly believed he was stepping to his grave.

An attempt, however, was made *even on the field* to settle this matter. Mr Douglas, with that good sense and good heart, which has really made it a pleasure to remark his conduct in this affair, asked *his own friend Sir Alexander*, immediately before the fatal preparations were made, if there was no possibility of yet settling it?—Sir Alexander knew how it might be settled. The two propositions of either denying the papers—though, to be sure, he could not well do

\* See Letter to Mr Maconochie in the *Appendix*.

this, after having admitted them,—or the simple and honourable apology of the whole being a bad joke, were still open to him. But he shook his head, and said it was impossible.

So the parties met, and I need state no more. They fired together, and Sir Alexander fell. The contrast which was then exhibited in the conduct of this sulky poltroon—this bully--this ruffian—forms one of the most striking and honourable pictures I have ever seen in moral nature. Mr Stuart, instead of rushing impatiently to a premature combat, accommodated his antagonist, with admirable coolness, with every delay, and every request, that he made. He was willing to follow him to the Continent. He then agreed to meet in England. He agreed to give the delay of a fortnight. He agreed to meet in Scotland; and though it has been said there was hurry at last, that hurry, though it did not come from Sir Alexander Boswell, was occasioned by the natural and resistless conduct of a member of his family; who, hearing of his danger, gave that information, without blame to either party, certainly without blame to Mr Stuart, which made it impossible that farther time could be granted.

Now he who had borne all his intolerable injuries with a degree of courage far more heroic than that of braving present danger in the field; he, who, during his own personal danger, had behaved as if he had not been the novice in such matters that he was, no sooner found himself unexpectedly the survivor, and saw his antagonist at his feet, than he was instantly dissolved in all the tenderness of an infant. He was hurried away from the field. I believe, of himself, he was incapable of moving from the spot. He came to Edinburgh; but, even amidst the agitation of that moment, he did not forget what was due to his name. He left a message in the proper place, which we really think might have saved the public prosecutor from saying, that after this fatal day *he fled and absconded from justice*. Rather than have submitted to this sarcasm, for it is more like that than any thing else, Mr Stuart would have rushed instantly to jail, could he have foreseen the possibility that such a charge awaited him. He went instantly to a friend, Mr James Gibson, and amidst all his agitation, purely directed towards the unfortunate gentleman who had been wounded, he directed him *to leave word at the Crown-office, that whenever he was wanted, the public prosecutor might command his presence*. This was not a *fleeing from justice*. It was only a fleeing from those inconveniences to which



suspected innocence is necessarily subjected ; and, accordingly, from that day to this, he has been not only anxious for his trial, but he has been using every exertion to bring it on, to *invite, to goad, to provoke*, the public prosecutor to proceed.

He went to London, and from thence to France ; and we have the two gentlemen here this day, Mr Thomas Allan and Mr John Clerk, with whom he was when he first received the intelligence that Sir Alexander was no more. These gentlemen will explain to you if he received it in the spirit of a man who was merely glad that he was himself safe, or with the temper of one who had any feeling of malice towards the deceased. They will tell you that they never witnessed so natural and so generous a flood of sorrow, for the ties which he knew that he had broken, and for the life which he knew that he never could recall.

Out of these facts, the great question which your Lordships will this day have to ask is, if the catastrophe of this painful affair is to be alleviated by a conviction of murder against Mr Stuart ? On the law of the case I have nothing to say, because it will come hereafter at a more proper time, and from an abler hand. But I may state in general, that I know that our law is rigid in its provisions for the preservation of life. I know also, that it is liberal in its presumptions of innocence, and in its sympathy with the infirmities of our nature ; and that all its other maxims are levelled and absorbed in this great one, that no man *can* be guilty, whose mind is innocent. Is the mind of the pannel innocent of crime on this occasion ? I have one fact more to state in illustration of that, and it is one which really forms a conclusive and impressive termination to all the apologies I have stated for Mr Stuart. Sir Alexander Boswell, in reference to this affair, consulted no less a person than a Supreme Criminal Judge,—a Judge of this Court,—that Judge, who, to his honour, is not here to-day ; and, in the letter which he writes to the brother of that Judge, he says, that, “ *on consulting him, his Lordship tells me, I may depend on you.*” That is, a Supreme Criminal Judge prepared Sir Alexander Boswell for the meeting, by furnishing him with a second. If any one imagines that I state this to the disparagement of that Judge he is mistaken.—I say it to his honour. It only proves that such was the inevitableness of the combat, that even a person best acquainted with the laws, and one professionally reared to reverence them, could not so far



pluck his human nature from his breast, as to say that it was wrong.

I know that, in the application of the law, it is sometimes thought due to the deceased, and to the interest of society, that offences of this kind should be visited with some punishment. But it is a sufficient check against the repetition of them, that the sufferer, before he engages in them, and ever afterwards, must be deeply punished in the quarrel, and in the event ; and I, therefore, conclude by submitting, that, instead of adding to the sufferings of him who has already borne so much, and who, let this case terminate as it may, is doomed to suffer so much more, the only legal, the only moral, the only appropriate conclusion of this day's trial must be a persuasion, that he acted under the operation of a great moral necessity, and that a verdict of *Not Guilty* is the result, which will give most satisfaction both to the law and to all reasonable men.

MR SOLICITOR-GENERAL.—The legal relevancy of the libel in this case is not disputed, and I am disposed to think that it is neither useful nor necessary, in the present stage of this matter, to enter into any argument on the fitness or relevancy of the topics intended to be urged in defence. If, in the course of leading proof on the part of the pannel, it should occur to the Public Prosecutor, that there is any objection to any part of the evidence that has been referred or to the relevancy, it will be time enough then for us to state.

In the present stage of the business, I shall only say that the pannel is entitled to the favourable benefit of the able and eloquent statement which has just fallen from his counsel.

LORD HERMAND.—No objection has been stated by the pannel to the relevancy of the indictment ; but it appears to me that it is incorrect, in as far as it charges the pannel with the intention of fighting a duel or duels, with others of the lieges than Sir Alexander Boswell. If we find the indictment relevant, it ought to be with a *salvo* in this particular.

LORD GILLIES.—No objections have been stated by the prisoner to the relevancy of the indictment ; but it is our duty, when it appears to us to admit of any doubt, to direct the attention of the Court to it. And there is one part of

the statement in this indictment of which I entertain considerable doubt, both as to its relevancy and its expediency. It is to me quite new and unprecedented, and I do not see how the Court can allow it to remain.

The charge states narratively, That the pannel at the bar formed the unlawful design of challenging the late Sir Alexander Boswell to fight a duel. So far the statement is correct. But then it adds,—and others of the lieges to fight a duel or duels. That appears to me to be altogether new, and I do not think it consistent with our duty to allow it to go to proof. I doubt the relevancy of such a charge as this,—that Mr Stuart had formed the unlawful design of challenging others of the lieges to fight duels,—and I thought it right to bring it under your Lordships' view.

LORD PITMILLY.—I agree with my brother in opinion, that this part of the charge is irrelevant.

LORD SUCCOTH.—I think so too. We have nothing to do with any other but Sir Alexander Boswell, and therefore I think those general words should not be in this indictment.

LORD HERMAND.—The same thing struck me. I would not have this indictment cast—my desire is that the trial should go on, and I believe that is the desire of more than myself. There is no averment here that Mr Stuart knew that Sir Alexander Boswell was the author of these libels.

LORD JUSTICE-CLERK.—It certainly is our duty to notice if any thing irrelevant is stated in this indictment, whether it has been noticed by the counsel for the prisoner or not. And, therefore, there can be no impropriety in Lord Gillies' noticing what appeared to him to be irrelevant; and I confess, upon reading this indictment, it did appear to me that this part of it is not relevant. No doubt, it consists of mere narrative, but a great part of this indictment is made up of narrative, and if your Lordships were to sustain an objection on that ground, it would apply to the whole; but I must confess, as this charge is exhibited against the prisoner, charging him with the specific offence of the murder of Sir Alexander Boswell,—his having formed or not an intention of challenging others of the lieges to fight duels—is not pertinent to this issue; and, therefore, I agree with your Lordships, that these words should be struck out.

The following jurymen were then selected by the presiding Judge, and sworn to pass on the assize of the pannel :

Thomas Adinston of Carcant.  
 William Pagan of Linburn.  
 John Wauchope of Edmonstone.  
 Sir Alexander Charles Maitland Gibson of Cliftonhall,  
 Bart.  
 Sir John Hope of Craighall, Bart.  
 James Watson of Saughton.  
 James Haig of Lochrin.  
 John Thomson of Burnhouse.  
 John Anderson of Whitburgh.  
 Sir James Dalryell of Binns, Bart.  
 James Dundas of Dundas.  
 David Brown, clothier in Edinburgh.  
 Robert Paterson, ironmonger there.  
 Thomas M'Ritchie, wine-merchant, Leith.  
 William Telfer, merchant, Leith.

#### EVIDENCE FOR THE CROWN.

The following witnesses were then adduced on the part of the prosecutor :

The EARL OF ROSSLYN, sworn by the Lord Justice-Clerk.

LORD JUSTICE-CLERK.—My Lord, Persuaded that your Lordship must be acquainted with the privileges of the peerage, and considering that such a case as the present is new, and has never been brought under the deliberate judgment of the Court, and as the question arising upon it may depend upon another jurisdiction, the Court will leave it to your Lordship's discretion, what course you will think it fit to pursue in this case.

LORD ROSSLYN.—It is fit, under those circumstances—particularly after the honour your Lordship has done me in thus addressing me—that I should state that I am not aware that any thing in my situation as a peer should alter or affect my duty in giving testimony as a witness, when duly called on to do so in a court of justice,—nor do I hold, as far as I understand, that any privilege belonging to that rank should prevent me from answering any questions which the Court



may think fit to put to any other witness standing in similar circumstances.

**LORD JUSTICE-CLERK.**—Your Lordship is called in this question only as a witness ; and though ordinary witnesses are bound to answer the questions put to them, they are under the protection of the Court, and thus secured from being subject to be tried for any matter as to which they may have given evidence, yet, as your Lordship, in a case of this nature, is not subject to the jurisdiction of this Court, you will judge what course you should follow.

**LORD ROSSLYN.**—I understand I am under the protection of the Court the same as any other witness ;—so far am I under the protection of the Court, that I cannot be called upon hereafter. I wish to explain, that I do not see any distinction that can be taken between a peer and any other person,—the protection of the law being granted to peers equally with other witnesses.

**Mr SOLICITOR-GENERAL.**—Are you acquainted with the pannel at the bar ?

A. I am.

Q. Were you acquainted with the late Sir Alexander Boswell ?

A. I was.

Q. In the course of the month of March last, were you charged with any message or communication by the pannel at the bar to Sir Alexander Boswell ?

A. I was.

Q. Will you explain what was the nature of that message ?

A. Upon the 25th of March last I saw Sir Alexander Boswell, in consequence of a note which I had written to him, requesting permission to see him ; and I stated, that I waited on him at the desire of Mr Stuart. I stated to him that Mr Stuart had been in possession of certain papers, some of which appeared to be in Sir Alexander Boswell's hand-writing, and having been sent by the post, bore the post-mark of Mauchline, and the corresponding post-mark of reception at Glasgow : That those papers were addressed to the Editor of the Sentinel, and appeared to be originals (some of them) of papers published in that newspaper : That one of them particularly, a song, contained matter most offensive and most injurious to Mr Stuart's character, charging him, in more passages than one, direct-



ly with cowardice : That among those papers there was a letter purporting to be signed by Sir Alexander Boswell, to the Editor of the Sentinel, containing some praise of the paper, and ordering it to be sent to him : That the song, and other papers, letters, &c. reflecting on Mr Stuart, appeared to be in the same hand-writing with that letter which bore Sir Alexander's signature : That the similarity of the hand-writing, together with the circumstance of the post-mark of Mauchline, formed so strong a presumption that these papers had been sent by Sir Alexander, that Mr Stuart thought himself entitled to ask Sir Alexander whether he was or was not the author of them, or had sent them to the newspaper. I stated, at the same time, that if Sir Alexander could say that he was not the author of these papers, or had not sent them to the newspaper, such a denial on his part would be conclusive against any evidence.

SOLICITOR-GENERAL.—Q. Who were present at the time you gave the message you stated to Sir Alexander Boswell ?

A. No person at first.

Q. What passed then ?

A. Sir Alexander stated that it was a subject of great delicacy, and he desired to have a friend present, to which I acceded, as highly desirable. Sir Alexander left me, and returned with Mr Douglas as his friend. I then repeated to Sir Alexander, in Mr Douglas's presence, what I had before said to Sir Alexander, taking all possible care to impress on Mr Douglas's mind, that my question to Sir Alexander proceeded and was justified by, what I conceived to be, taking all the circumstances together, strong presumptive evidence that the papers complained of had come from Sir Alexander ; and repeated, that Sir Alexander's denial should be held conclusive against any presumption.

Sir Alexander and Mr Douglas desired to confer together. I left them, and, when called back, found Mr Douglas alone. He stated to me, that he could not advise Sir Alexander Boswell to give any answer to the question,—that Mr Stuart was in possession of the facts, and the evidence upon which he relied, and he must thereupon exercise his own judgment. He stated, that if this unfortunate business was to proceed any farther, there were two conditions which Sir Alexander considered as indispensable,—one, that no meeting should take place for fourteen days, at least, because he had some family settlements to arrange which he believed would require his presence at kirk and market,—

the other, that any meeting which might take place should be on the Continent. On these conditions I had no difficulty in saying, that I thought them likely to be agreed to by Mr Stuart.

Mr Douglas then called in Sir Alexander, who stated, that he acknowledged the letter with his signature to be his writing,—and, with respect to the other papers, he declined to give any answer whatever. We then parted.

I stated that I had copies of the papers in my hands, and the letter, particularly of the song, and of the letter signed “*Ignotus*,” and I believe I tendered them; but they certainly were not produced or looked at. Neither Mr Douglas nor Sir Alexander thought it necessary to require a sight of the papers. We parted, and I agreed to call upon Mr Douglas at his own house shortly after I saw Mr Stuart.

MR SOLICITOR-GENERAL.—At this conference, at which were present Sir Alexander Boswell, Mr Douglas, and your Lordship, I understand your Lordship had only copies, and did not exhibit the originals?

A. I did not.

Q. And I understand farther, they were not asked for? What were the precise papers your Lordship was charged chiefly to insist upon?

A. There was a song, and a paper signed “*Ignotus*.” It was inclosed in a cover, besides the letter I first mentioned.

Q. These were the three papers, upon which your Lordship was authorized to ask an explanation from Sir Alexander?

A. They were.

Q. Was your Lordship charged to dwell particularly on any of those papers more than another,—and have the goodness to explain it to the Jury?

A. Certainly I considered the song as the paper of far the most importance, and upon which I chiefly, if not entirely, rested in stating the question—and I did so, because, in two passages, it contained a direct imputation of cowardice. However offensive any parts of the other papers might have been, their importance to Mr Stuart’s character was greatly inferior, and, therefore, certainly not so much relied upon.

Q. Did your Lordship ever previously see the address of the paper signed *Ignotus*?

A. I did.

Q. Examine those papers ?

A. That is the letter signed Ignotus. The second sheet contains other matters. That is the song.

Q. Did Mr Douglas say he would not advise Sir Alexander to answer as to the other papers ?

A. He admitted the letter to be genuine, and said he would not say any thing as to the others.

Q. Did you then make any communication to Mr Stuart ?

A. No farther than what I have stated.

Q. Will your Lordship now proceed to state what followed ?

A. I saw Mr Stuart, and proceeded immediately to Mr Douglas, and stated, that I was grieved to find that no alternative was left to Mr Stuart.—That Mr Stuart agreed to both the conditions stated by Mr Douglas, viz. That there should be a delay of fourteen days,—and that the meeting should be on the Continent ;—and it was settled between Mr Douglas and me, that, as soon as it should be convenient for Sir Alexander to be in London, after settling his business, I should then hear either from him or his friend.—I stated that I would advise Mr Stuart, who had urgent business in London, to proceed there without the least delay ;—and that I would be there myself on or before the 6th of April. It was agreed that all subsequent arrangements, with respect to the time and place of meeting on the Continent, should be settled when we were assembled in London.—I did collect that Mr Douglas would not be able to go with Sir Alexander to England.—I asked Mr Douglas, before I parted with him, whether there would be no possibility of avoiding, by any means, the painful necessity of carrying this matter to extremities.—I asked, whether it were possible that Sir Alexander should treat the song as a very bad joke on his part, and one of which he was ashamed ; declaring, at the same time, that he had no serious intention of reflecting on Mr Stuart's courage or character. The manner in which that proposition, so thrown out, was received, led me to understand that Mr Douglas had no hopes that Sir Alexander would say any such thing.

I left Mr Douglas to go to Newhaven, meaning to return to Fife immediately, in the conviction that every thing relating to this subject was for the present finally arranged. The boat had sailed ; and, before I embarked, I was over-



taken by Mr Douglas, who stated to me that Sir Alexander had taken the advice of a legal friend, and that he thought it no longer necessary to go to the Continent, and that Sir Alexander was therefore desirous of having a meeting in Scotland. I objected to that as highly inconvenient, and embarrassing in some respects, and as contrary to the agreement entered into between us. I stated, that many circumstances made it appear to me very desirable that all future arrangements should be settled in London, as we had agreed, whether we should go to the Continent or not; but that I was still of opinion, that we ought to adhere to the arrangement of going to the Continent. I stated also, that, upon my advice, I was not even certain whether Mr Stuart might not be set out for London before any communication could be had with him, and that I certainly believed he would go that night.

Mr Douglas mentioned, he thought it better that the meeting should take place in Scotland. I objected to this, that still the same objection remained. It was a matter of some discretion, and required some discussion; and Mr Douglas returned to Edinburgh, saying, as we parted, that he hoped there would be no hanging about the case, and that the meeting might take place here. I stated that I would not go back to Edinburgh, because I was persuaded that my return with him, coupled with our meeting in the morning, might excite observation and suspicion. I then went home.

All this took place the same day. I came over about nine, and returned with the late boat between four and five.

MR SOLICITOR-GENERAL.—Q. Were you again called upon next morning?

A. Yes.

Q. By whom?

A. By Mr James Brougham.

Q. In consequence of that visit from Mr James Brougham, what was done? What was the object of the visit?

A. (After a pause.) Of course, the Court cannot desire me to state what Mr James Brougham confidentially communicated to me. I am not at liberty to state what passed with Mr Brougham. It certainly cannot be evidence what he said to me. I will not repeat it without the direction of the Court. That was my reason for hesitating a little upon the question.

LORD SUCCOTH.—Your Lordship may mention what Mr

Brougham or any one else said, so far as is necessary to make us understand your testimony as to the facts under investigation.

MR SOLICITOR-GENERAL.—Q. What time in the morning did you receive this visit from Mr Brougham?

A. I cannot speak to a few minutes, but I should think it was from about a quarter to about half-past eight o'clock.

Q. Was it at Dysart?

A. At Dysart. From eight to half-past eight certainly it was. It was early in the morning. Mr Brougham stated to me that Sir Alexander Boswell and Mr Stuart had been bound over in the course of the night, by the Sheriff of Edinburgh, to keep the peace within the county and city; and that, in consequence of that proceeding, and the expedition which the matter now required, it had been settled during the night that Sir Alexander and Mr Stuart should meet at Auchtertool that morning, and he desired me to meet Mr Stuart at Auchtertool, which I did. I went there; and on the east side of the town I met Mr Douglas. We had some conversation, and we fixed upon a piece of ground in a field by the road side. Mr Stuart and Sir Alexander arrived in carriages, and got out at the place we had fixed upon.

LORD JUSTICE-CLERK.—Q. At what time was this?

LORD ROSSLYN.—A. I believe at ten o'clock.

MR SOLICITOR-GENERAL.—Q. State in what parish Auchtertool is?

A. Auchtertool is a parish by itself, with a small town.

Q. And this field you fixed upon, is it in the parish of Auchtertool?

A. To tell the truth, I do not know. It is a little to the eastward of Auchtertool. I cannot state whether it is in the parish of Auchtertool, or in the adjoining parish.

Q. Am I to understand it is a little to the northward of the road?

A. The village is to the northward of the road, and the place is just alongside the road, to the eastward of Auchtertool.

Q. What next took place? Your Lordship will please go on with your statement.

A. The pistols were produced, and were loaded by Mr Douglas and myself, Mr Douglas sitting down, and I standing up. Mr Douglas received from me a measure of powder for each, and the balls, and rammed them down. There were but two pistols, of which Mr Douglas took one, and I took the

other. The ground was measured, (I cannot state exactly the time, whether before or after loading,) twelve very long paces between the stations. There was some trifling difference in the measurement, and we took the longest. The pistols were delivered to the parties respectively by Mr Douglas and by me; and it was agreed that they should fire together, by a word. Mr Douglas put it upon me to give that word; which I did accordingly. They both fired, and Sir Alexander fell.

Mr SOLICITOR-GENERAL.—Q. Will your Lordship go on to state what took place then on the field?

A. Every possible assistance was afforded to Sir Alexander, who was surrounded by the medical attendants, Mr Douglas, and myself, and I believe by Mr Brougham, who, during these transactions, had remained on a hill at a little distance, in charge of my horse. Mr Stuart had advanced with great anxiety towards Sir Alexander, but, from his situation, and the necessary treatment from those about him, he did not speak to him, nor do I think could have had any proper opportunity of doing so. When, upon examination of the wound, I was given to understand that it was a very serious one, I advised Mr Stuart to go away, which he did. All the others remained to give what assistance our strength might enable us in removing Sir Alexander to Balmuto, where it was judged advisable to carry him. No time was lost that could have been saved.

Before any thing took place upon the ground, Mr Stuart asked me if it was not fit that he should make a bow to Sir Alexander, expressive of a wish to be reconciled? I answered that I thought it perfectly right. And he advanced apparently for that purpose. Sir Alexander was then turned from him, and walking away, and I believe Mr Stuart had not the opportunity of doing so; but immediately after, my attention was drawn away from Mr Stuart to other objects.

I do not know if I have omitted any thing as far as narrative can go. If your Lordships, or counsel on the other side, put any questions to me, I shall answer them.

Mr SOLICITOR-GENERAL.—Q. You attended Sir Alexander to Balmuto?

A. I did.

Q. By whom was he accompanied?

A. By Mr Wood, Mr Liston, Dr Johnstone of Kirkcaldy, and myself. I bore a considerable hand in carrying him to Balmuto.

Q. And your Lordship left him there?



A. I left him there. All of us bore a very considerable share in carrying him, from the want of people there. And I left him there.

Q. At or about the time the ground was measured, or taken, as has been explained, did any conversation pass between your Lordship and Mr Douglas as to any possible reconciliation?

A. I should say nothing at all material—an expression of a wish, I believe, on the part of Mr Douglas first, and certainly on my own, that any mode could be found, by which it might be amicably settled. But it was a mere wish; certainly without any hope, on my part, that such arrangement could be made, and without any explicit proposal on either side. After what had passed between Mr Douglas and me, the day before, when I had thrown out what I did, and made the greatest possible advance without success or hope, I considered the case as desperate.

Cross-Examined by Mr JEFFREY.

Q. Before you went to Mr Douglas at all, or Sir Alexander, you had examined the papers upon which your message turned?

A. I had.

Q. Had you compared, yourself, the hand-writing of the signed letter, with the hand-writing of the other two papers?

A. I had, carefully.

Q. And your Lordship was then satisfied that they were of the same hand-writing, or so like as to raise a presumption or belief that they were of the same hand-writing?

A. I was satisfied that the letter signed *Ignotus*, and the direction of the song, were, as far as I could judge, of the same hand-writing with the signed letter.

Q. With respect to the hand-writing of the song?

A. With respect to the hand-writing of the song, at the first view, there appeared to be some difference. It was in a hand that seemed to me to be in some degree intentionally disguised. But, upon a strict examination of it, I was led to believe that it was written by the same person.

Q. Had your Lordship examined and at all compared the texture or marks of the paper upon which those documents were written?

A. Yes. The water-mark, the texture of the paper, and the size, were different. The signed letter was a quarto, the other folio. The water-mark appeared to be the same, "Val-

leyfield." All the three had the post-mark of Mauchline ; and the corresponding mark of reception, " Glasgow." And the address appeared to me to be indisputably the same handwriting.

Q. Then I understand it was your Lordship's opinion there was a sufficient case made out to justify the application to Sir Alexander Boswell ?

A. Most undoubtedly.

Q. You gave that opinion to Mr Douglas before calling out Sir Alexander.

A. I did.—The presumption arising from combining all the circumstances left no doubt.

Q. Does your Lordship remain of the same opinion now ?

A. I do.

Q. I think your Lordship mentioned you took copies of the letter and paper signed "*Ignotus*" to the meeting ?

A. I had them in my hand.

Q. And mentioned to Mr Douglas you had them ?

A. I did. He did not desire to see them.

Q. You stated they contained passages most offensive and injurious to Mr Stuart ?

A. I did.

Q. And neither Sir Alexander nor Mr Douglas required exhibition of those papers ?

A. Neither.

LORD JUSTICE-CLERK.—Q. The song contained a direct imputation of cowardice in two parts ?

A. The song did.

MR JEFFREY.—Q. And both gentlemen declined to answer any question ?

A. Sir Alexander declined to answer, except as to the signed letter,—and Mr Douglas said he could not advise Sir Alexander otherwise.

Q. May I ask your Lordship whether there was any thing in the *manner* of putting the question either to Sir Alexander individually in the first instance, or to both together afterwards, which, in your opinion as a man of the world, was such as to prevent Sir Alexander from answering, if, in the negative or not, he was the author of these writings ?

A. I can safely say that there was nothing in my *manner* of putting the question, as far as I can judge, that could have given the least offence, or caused any difficulty in answering the question in the negative, if Sir Alexander had thought fit to do so ; and I venture to say this the more confidently, that

I am quite certain I took the greatest possible pains in my power to guard against any such unfavourable impression or interpretation,—and I repeated the observation that we should consider Sir Alexander's word as completely decisive and conclusive of any question, and against any presumption that had been raised by our examination of the papers.

Q. Is your Lordship, as a man of honour and of the world, aware of any punctilio, or point of honour, that could have prevented a person, standing in Sir Alexander's situation, from answering the question in the negative, if he could have done so with truth?

A. I am not. And I would not, for one moment, have hesitated to do so for myself. I should not have had the least hesitation in so answering the question.

Q. If you had been the friend of any person to whom such a question had been put, and knew he was not the author, would you, in the circumstances, have advised him to declare he was not the author?

A. As the question was put, I would, without the least hesitation.

Q. Then may I ask your Lordship, whether the declinature of Sir Alexander and his friend to answer the question, gave you the impression that their doing so was equivalent to an acknowledgment?

A. The declinature of Sir Alexander and his friend to answer the question gave me such an impression.

Q. I observe you mentioned, that, at the subsequent meeting with Mr Douglas, at his own house, you suggested, whether the matter might not be got over by Sir Alexander saying, it had been a bad joke, and that he meant nothing offensive to Mr Stuart? Did Mr Douglas, on this, say, Sir Alexander was not the author of the song?

A. Not that I recollect.

Q. Then you supposed he was the author of the song?

A. Certainly.

Q. That of course was conveyed to Mr Douglas by the very question?

A. Certainly.

Q. If I understood you right, the first direct reference to a meeting between the parties came from Mr Douglas. I think you said, when an answer to the question was declined, Mr Douglas said, if the matter was to go on, Sir Alexander had two conditions to propose—one, that no meeting should take place for fourteen days; and another, that it should take



place on the Continent. Had you previously required such meeting, or was that the first time it was mentioned?

A. I had certainly not in direct terms required such meeting, but the necessary inevitable inference, from the question put, and the answer given to it, left the thing understood.

Q. But in point of fact Mr Douglas stated it first?

A. He stated it, because he stated, that, if a meeting was to take place, Sir Alexander had two conditions to propose.

Q. And that was the first and direct mention of a personal meeting?

A. That was the first mention of a personal meeting.

Q. I think you said Mr Stuart acquiesced in both conditions?

A. At once.

Q. I have two questions to ask your Lordship on the whole matter. From all that you saw of Mr Stuart's conduct in the matter, from the first commencement to the last, had your Lordship any reason to believe that he was actuated by hostility or vengeance to Sir Alexander Boswell, or merely by a desire to repair his injured honour?

A. From the whole of Mr Stuart's conduct throughout the proceeding, the impression made upon my mind was, that there was no feeling of personal ill-will or resentment against Sir Alexander Boswell, but a deep sense of the unavoidable necessity of vindicating his own honour, more especially when it was assailed by a direct imputation of cowardice.

Q. Did you find him unreasonable, or tractable, and disposed to comply with all your suggestions?

A. Perfectly reasonable, and most ready to comply with my advice.

Q. Another question I wish to ask your Lordship is, whether, on the whole of the transaction, from first to last, Mr Stuart's bearing and deportment were such as to make your Lordship persuaded that he was a man of constancy and courage, or cowardly and timid?

A. I have no difficulty in stating, that Mr Stuart's conduct from first to last, from the commencement to the 26th of March, was cool, composed, and temperate, and such as might be expected from a man of constancy and courage.

Q. Your Lordship applies that to his conduct on the field, as well as preceding?

A. To every thing from beginning to end.

Q. Was there any conversation or consultation about what he ought to do in the discharge of this painful task, I mean as to taking aim?

A. Yes.—Mr Stuart said to me at the moment I gave him the pistol, “I think I ought not to take aim,”—in which I agreed. I desired him to present his side and not his front.

Q. Did your Lordship, accordingly, observe how he conducted himself? Had you your eye upon him, after giving the word?

A. Yes, certainly.

Q. Have the goodness to mention what the word was?

A. First, both parties were asked if they were ready. Then the word was given—as quick as the words could follow each other. “Present—Fire.”

Q. Will your Lordship take the trouble to repeat the two words, in the *time* they were given, as nearly as you can?

(Here his Lordship repeated them in the time they had been given.)

Q. Before the word, “Present—Fire,” was given, the pistol was not raised by Mr Stuart?

A. No.

Q. It was at the word “Present” he raised the pistol?

A. It was—He raised his arm and fired, almost instantaneously.

Mr JEFFREY.—There was no time, then, for an aim?

Q. You mentioned both parties fired? Did they both fire at once upon the word?

A. There was a small difference between the two. Sir Alexander’s pistol was the last, but it came very close upon the other.

Q. Can you mark the time between the two, so as to give the Jury a notion of it?

A. It was so close as scarcely to be distinguished.

Q. Was it as close as this? (Here Mr Jeffrey gave two quick raps on the table.)

A. Yes, I should think it was.

Q. Did your Lordship observe whether Sir Alexander fired towards Mr Stuart?

A. I cannot say. I observed nothing to the contrary. In fact, I made no particular remark.

Q. May I ask your Lordship whether you had, at this time, any intimation, knowledge, or belief, that Sir Alexander did not intend to fire at Mr Stuart?

A. Certainly not. I had no such intimation, knowledge, or belief. Such an intimation given to me must necessarily at once have concluded the possibility of a meeting, and

would have amounted to an intimation that it was Sir Alexander's desire not to fight. Such an intimation given to me would necessarily have concluded all proceedings, and would have amounted, in my judgment, to a declaration on the part of Sir Alexander, that he did not mean to fight. It would have been quite impossible that I could have been a party to any proceedings after such an intimation.

Mr JEFFREY.—I have a question or two to put as to Mr Stuart's character. It is not quite *cross*, my doing so, but it will save trouble to my Lord Rosslyn to have them put now.

Q. You have known Mr Stuart for some time?

A. A good many years. I have known Mr Stuart for many years.

Q. Pretty intimately?

A. Yes, particularly of late.

Q. Had you occasion to see him frequently, both in public and private society?

A. Very frequently.

Q. May I ask your Lordship your general impression as to his character, for honour and general respectability, and particularly as to his temper and disposition, as being quarrelsome, and vindictive, or otherwise?

A. I have no difficulty in saying, that, in all my intercourse with him, I have never found a man less quarrelsome or less vindictive than Mr Stuart, or more generally respected.

Q. He was much occupied in improvements? \*

A. Very much in general business, and in improving his estate.

Q. Have you occasion to know he was not given to field sports, which require the use of fire-arms?

A. I never saw or heard of him as so engaged.

Mr JOHN DOUGLAS, *sworn by Lord Hermand.*

Examined by Mr M'NEILL.—Were you acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. Do you recollect, in March last, of attending him to a meeting with Lord Rosslyn?

A. Yes, I do.

Q. Tell us what passed, in the order of time. Do you remember on what particular day it was?

A. It was on the 25th March. When I went into the room where Lord Rosslyn was, he held in his hand some

\* See *Appendix*, Nos. 1, 2, 3, and 4.



papers. Lord Rosslyn then mentioned that he had called this meeting on a particular business: That a friend of his had got or seen the originals of the papers,—of which he held copies in his hand, which contained obnoxious language on his friend's character. He mentioned his name—Mr James Stuart. One of the papers, in particular, was a Song. These papers were unsigned; but, amongst the documents, they had also found a signed letter of Sir Alexander Boswell's; and, on making a comparison between the signed letter, and the unsigned documents, they had no doubt they were of the same hand-writing. They had also the Mauchline post-mark on the signed, as well as on the unsigned documents, and the presumption was so strong that they were Sir Alexander's hand-writing, that this meeting had been called, to get him to confess or deny if they were his hand-writing: That if, upon his honour, he would say that they were not his, no further question would be asked,—or if he confessed that they were his, and would say he was sorry for it, and that he had meant nothing serious against Mr Stuart's character and honour, and made a proper apology, he would require nothing more. Sir Alexander then answered, that any document signed by his name he admitted to be his, but he would say nothing as to any other. His signature he would not deny,—anything unsigned, he begged not to be asked any questions about. I think that was all that passed at this meeting.

Q. Did all this pass continuously?

A. Yes.

Q. Did not Lord Rosslyn retire for some time?

A. Yes; he went into another room, and it was after he returned that Sir Alexander made that answer.

Q. Was that answer the result of your deliberation and advice?

A. It was.

Q. Then that interview was at an end?

A. That interview was then at an end. Lord Rosslyn then said he would see me where I might appoint. I fixed upon my own house.

Q. Did Lord Rosslyn come to your house?

A. He came to my house in about twenty minutes or half an hour thereafter.

Q. What passed between you and Lord Rosslyn?

A. His Lordship said, that he had seen Mr Stuart, and had stated to him what had passed; and as they were still both of opinion, that these documents were in Sir Alexander's

hand-writing, a challenge was inevitable ; that he had received a message from Mr Stuart to Sir Alexander ; that a meeting must take place ; and this message I was to deliver to Sir Alexander.

Q. Did you communicate that message to Sir Alexander, and what was the time fixed for the meeting ?

A. I did. Sir Alexander requested that it might not be sooner than a fortnight, as he had settlements to make, which would take some time to prepare, and would require his going to kirk and market.

Q. Did Lord Rosslyn assent to this ?

A. He did. He said, he thought it was a very proper thing, under such circumstances, to ask a fortnight.

Q. Did any thing else take place ?

A. Yes. Sir Alexander mentioned that he wished the meeting to be on the Continent ; and to that Lord Rosslyn also assented.

Q. Were any farther arrangements made between you and Lord Rosslyn at that time ?

A. Nothing farther. We had had communication before.  
The LORD JUSTICE-CLERK.—Was any thing said about going to London ?

A. Lord Rosslyn might have said, that he was going to London, or something of that kind ; and that the parties might go there, and proceed from thence to the Continent. I do not recollect. It did not make any impression on my mind.

Q. Lord Rosslyn then went away with the intention of going home ?

A. I understood so.

Mr M'NEILL.—Immediately, or shortly after Lord Rosslyn went away, did you see Sir Alexander Boswell ?

A. Yes. Within five minutes Sir Alexander came into my house.

Q. Did you then communicate to him what had passed betwixt you and Lord Rosslyn ?

A. I did. Sir Alexander said he was anxious to have seen me before I had seen Lord Rosslyn.

Q. Did he state the cause of that anxiety ?

A. He did. He stated, that, since we parted, he had seen a legal friend, who had made him alter his opinion as to the duel taking place on the Continent ; and that he now wished it might take place in Scotland. I told him, this was very unlucky, as we had settled it, and Lord Rosslyn had left Edinburgh ; but that I would try to lay hold of Lord Ross-

lyn. I called on his Lordship immediately, but found he was gone. I immediately went after him to Newhaven, and there overtook him. I then communicated to Lord Rosslyn Sir Alexander's wishes as to the duel taking place in Scotland. Lord Rosslyn said, he had seen his friend, Mr Stuart, and had communicated to him that the meeting was fixed to take place on the Continent, and he objected to any change in that arrangement; and he declined returning with me to Edinburgh, as it might excite suspicion. However, I stated, that if he allowed me I would call upon Mr Stuart, and I would let him know if a change could take place. Lord Rosslyn said, I might call on Mr Stuart.

Q. Did you call upon him?

A. I did, and mentioned the change that had taken place in Sir Alexander's wishes, and likewise what Lord Rosslyn had said.

Q. What answer did Mr Stuart make?

A. Mr Stuart said, he had no objections to the meeting taking place in Scotland; but he rather wished that this might be arranged with Lord Rosslyn, than do it himself.

Q. Did any thing farther pass between you?

A. Nothing at that time.

Q. What was the next step you took in the matter?

A. I communicated what had passed to Sir Alexander, about 7 or 8 o'clock in the evening. He then said he had seen his man of business since the morning, and had altered his mind in regard to the time of the meeting, as any settlements he had to make might be done in two days instead of a fortnight.

Q. Did he propose any farther change in consequence?

A. He said he thought it was his duty to give every facility to the other party; and, as the business he had to do might be done in two days, he authorized me to wait on Mr Stuart. I went to Mr Stuart's house again, betwixt nine and ten in the evening, and found him at home. I told him I had come to mention this other change in Sir Alexander's wishes. Mr Stuart said, he thought it not right that he should have any communication with me on matters of that kind: That he had a friend in the house I might communicate with, and who would write to Lord Rosslyn, who was then on the other side of the water. Mr Stuart then introduced Mr James Brougham. I stated to Mr Brougham, that Sir Alexander wished the meeting to take place in two or three days,—say Thursday, when every thing would be ready for starting to some convenient place,—I mention-



ed Berwick-upon-Tweed, where they might choose either the English or Scots side of the border. I hoped he would write to Lord Rosslyn, and arrange accordingly, if Lord Rosslyn had no objections. Mr Brougham agreed to communicate with Lord Rosslyn, and let me know when he heard from him.

Q. What was the next step you took?

A. I had gone to a party at the Royal Hotel; about two o'clock in the morning the waiter came, and told me a person wanted to speak with me. I found Mr Brougham waiting down stairs.

Q. What communication did he make to you?

A. He told me he had been anxious to see me: that about 12 o'clock the parties had been bound over to keep the peace by the civil power; and he was of opinion that Mr Stuart and Sir Alexander Boswell, if he and I had no objections, should meet the following morning.

Q. What answer did you make?

A. I answered generally, that, under all the circumstances of the case, I thought so too, if Sir Alexander had no particular objections.

Q. Did you then go to Sir Alexander?

A. I then went to Sir Alexander's house; he had gone to bed. Under the circumstances I raised the family, and got Sir Alexander up. He stated he was also anxious to see me, and supposed I had come upon hearing that they had been bound over to keep the peace by the civil powers. I stated what had passed with Mr Brougham. He at once agreed with me in opinion, that he ought to meet the other party the following morning.

Q. Did you mention any particular place?

A. I went to Mr Brougham after that, and I told Mr Brougham, that Lord Rosslyn having been acting as Mr Stuart's friend, he should be present, and that, as we must leave the county, the best way would be to go to Fife, and that would be the easiest way to get at Lord Rosslyn,—and that it might be over as soon as possible. Mr Brougham agreed to send an express to Lord Rosslyn, telling him the change that had taken place; and Auchtertool was fixed upon as the nearest place where the parties should assemble.

Q. Were any farther arrangements made with Mr Brougham?

A. Nothing with regard to this,—none, except as to the pistols. I told Mr Brougham Sir Alexander intended to have sent to the country for his own next day, and that, as we

would be off before the shops were open, he would be unprovided. Mr Brougham said there was a pair belonging to Lord Rosslyn, to one of which Sir Alexander would be welcome if he wished.

Q. What time did you and Sir Alexander leave Edinburgh? Did you set out together?

A. After Sir Alexander made arrangements at home, we got a chaise; he sent for a medical man, and we set off a little before five.

Q. Was any medical person in the carriage with you and Sir Alexander?

A. Dr George Wood.

Q. You crossed the water?

A. We crossed at the Queensferry—breakfasted at North Queensferry—then went to Auchtertool. We were to be there at ten, and were there about ten minutes before ten.

Q. Did you see any other carriage arrive at Auchtertool?

A. We saw a carriage arrive about ten minutes after ten o'clock—Mr Stuart was in it.

Q. Did you find Lord Rosslyn at the village?

A. Not at the village. I went toward the road at the east end of the village, as I supposed Lord Rosslyn would come that way, and I met him about a quarter of a mile from the village.

Q. Did you then return?

A. I then told Lord Rosslyn we were ready at the village, that Sir Alexander was there, and that Mr Stuart had arrived—and that Lord Rosslyn had better not come into the village, as he might be known.

Q. Had you any conversation at that time, with Lord Rosslyn?

A. I agreed to go back to inform Mr Stuart that Lord Rosslyn was there. Lord Rosslyn was to wait beyond the toll-bar, till the parties came up.

Q. You went back?

A. Yes, and then I returned with my party; we all came up to the spot where Lord Rosslyn was waiting—the other party then came up.

Q. They then got out of the carriages?

A. Our carriage was first—and they drove on a little farther.—I wished to speak to Lord Rosslyn, and went up to him. He pointed out a spot as convenient for the meeting, and begged me to go to the top of the hill to look at it. I did so, and I agreed it was a very convenient place, very retired. After examining the ground and approving of it, I

waved my hand, and Sir Alexander came out of the carriage, and came toward the place where we were. I then went up to Sir Alexander, and told him this was the place we had fixed upon.

Q. Did any thing pass between you and Lord Rosslyn as to the possibility of accommodating matters ?

A. I expressed my wish merely to Lord Rosslyn that the matter could be accommodated. He said he was afraid it could not. Nothing more passed.

Q. What was the next thing done ?

A. Lord Rosslyn and I proceeded to examine the most convenient place in this dell—a sort of hollow dell—we fixed upon a spot, where the distance was measured off.

Q. What became of the surgeons,—did they remain in sight ?

A. Just at the entry to this place. I begged Dr Wood not to come forward. He requested to be present, and declined staying behind, saying, that he would wish to be near at hand. He came upon the ground, and I believe the other surgeon also came. After the ground was measured, twelve paces, the pistols were loaded with ball.

Q. What did the parties then do ?

A. They took their positions.

Q. Lord Rosslyn and you retired ?

A. On one side. We had arranged the signal. Lord Rosslyn gave the word of command. He wished me to do it, and I said he had better do it.

Q. Did Sir Alexander, before coming to the ground, state any thing to you, as to how he was to act ?

A. Yes, he did.

Q. Where was that ?

A. In the carriage, on the way from the North Ferry to the ground. He asked me, as a friend, what advice I would give him as to firing. I answered, he was the best judge of that, and that he should consult his own feelings. He said he had no ill-will at Mr Stuart,—he had no wish to put his life in jeopardy, though in an unhappy moment he had injured him,—he bore him no ill-will; and, therefore, it was his determination to fire in the air. I expressed my approbation of his resolution to do so.

Q. Having had this conversation with Sir Alexander, and seeing the parties ready, how did you direct your attention ?

A. My eye was more upon Mr Stuart than upon Sir Alexander Boswell. I felt satisfied there was no great chance of Mr Stuart falling, Sir Alexander's determination having



been not to fire at Mr Stuart ; therefore I kept my eye upon him.

Q. Did you observe Mr Stuart raise his pistol ?

A. Yes, I did.

Q. Did he raise it steadily and deliberately ?

A. He did it very steadily.

Q. Seeing the direction of the pistol, did you form any opinion as to his taking an aim ?

A. I did not see the direction of the pistol. I saw it brought firmly up, and, of course, I then felt a little nervous.

Q. State what you observed ?

A. They fired, and I then saw Sir Alexander fall.

Q. Did you hear his pistol go off ?

A. Yes ; I am pretty certain I did. They both went off, I heard the noise of two distinct shots.

LORD JUSTICE-CLERK.—Were they distinct from each other ?

A. They were distinct from each other.

Mr M'NEILL.—Did you then go up to Sir Alexander ?

A. I immediately ran up to Sir Alexander, and inquired if he was wounded.

Q. Did the surgeons come up ?

A. They were quite at hand, and instantly with him.

Q. Did you observe Mr Stuart standing ?

A. I do not think Mr Stuart left his place, at least not much from where he stood. I did not observe him much. I did not look much at him.

Q. Did you make any intimation to him ?

A. After the medical persons had examined the wound, Dr Wood told me he was afraid it was mortal. I went towards Mr Stuart, and told him he had better go off directly.

Q. You have not mentioned the name of the medical gentleman who attended Mr Stuart ?

A. I did not know it at the time, but afterwards.

Q. Did any person appear on the ground but the parties and seconds ?

A. Yes ; another person whom I afterwards understood to be a medical person, Dr Johnstone, and Mr James Brougham.

Q. When Sir Alexander's wound was probed and examined, did he make any remark to you ?

A. He turned round to me, and said, he was very much

afraid he had not made his fire in the air appear so decided, as he could have wished.

Q. Was that the only observation of moment which he made?

A. That was the only observation.

Q. Was his wound dressed on the ground?

A. There was no dressing. He was then moved to Lord Balmuto's house. I borrowed Lord Rosslyn's horse to inform the family at Balmuto, to prepare for Sir Alexander's being brought.

Q. You assisted in carrying him?

A. On returning from Lord Balmuto's, I met them coming carrying him on a door. They had collected some people together, who assisted in carrying him there.

Q. You returned along with them?

A. Yes; along with Sir Alexander.

Q. Did you remain with him?

A. Yes; till the afternoon.

Q. Was the song that was talked of, the obnoxious article chiefly insisted on by Lord Rosslyn in the conferences with his Lordship?

A. Lord Rosslyn, holding the papers in his hands, said they were obnoxious, but the song in particular.

Q. Was the identity, or similarity of the handwriting, and of the post-marks, stated as the grounds of title for putting the question?

A. Certainly.

Q. Was the similarity of the handwriting chiefly insisted on?

A. He stated it, and also the post-mark.

LORD ADVOCATE.—Q. Was any thing stated at that time from which you inferred that the different papers were not of the same handwriting?

A. Nothing.

Q. Did you see the originals at any time?

A. Never.

Q. If you had understood or supposed there was any difference in the handwriting, would you have thought it your duty to have acted differently?

(Mr Jeffrey objected to the question.)

Q. If any thing had been stated that led you to suppose there was a difference in the handwriting, would you have thought it your duty, to demand a sight of the originals?

A. Certainly.

Q. If you had seen those originals, and it appeared to you

that that song was not in the handwriting of Sir Alexander, would you have thought it justifiable to have allowed any questions with regard to that song to be put to Sir Alexander?

(Mr Jeffrey having risen to state objections to the question, and the Court having in consequence intimated that the witness should retire, Mr Stuart rose.)

Mr STUART.—My Lord, the more complete this investigation is, the more agreeable it will be to me; and I have to request of my counsel not to object to any questions put by the Counsel of the Crown.

Mr JEFFREY.—It is not in every case I would be disposed to yield to any such request on the part of a client, but here I am disposed to allow the fullest possible investigation.

(The witness returned, and the question which had been objected to having been put,)

A. No, I do not think I would, if it was not of his handwriting. I think I would not have allowed him to answer the question.

*Cross-examined by Mr CUNINGHAME.*—I think you mentioned, that, in the carriage from the North Queensferry to Auchtertool, Sir Alexander Boswell said that he had injured Mr Stuart, and, on that account, that he would not fire at him—Do you know what he alluded to, in saying he had injured Mr Stuart?

A. He had written squibs against him.

Q. Did you understand one of those squibs to be the Whig Song on which Lord Rosslyn founded?

A. Perhaps it will be necessary for me to give a longer statement. When Sir Alexander first called upon me, it was on Sunday the 24th of March. He stated to me, he had arrived from London the night before about ten o'clock: That, upon his arrival, he had found a card from Lord Rosslyn. This card stated, that Lord Rosslyn had come to town very anxious to see him, and begged he would let him know when he arrived from London, as he had business of great consequence to mention to him. Sir Alexander then stated, that he anticipated from this, that he was going to receive a challenge, and he had no doubt it would be from Mr Stuart of Dunearn. He then mentioned, that he had, either since he came to Edinburgh, or before he came, learned there had been papers seized connected with the Glasgow Sentinel at Glasgow, and that he was afraid they might have got hold of some papers of his. And he then mentioned, that there was a song which he was afraid they might have



got hold of, and upon which he was also afraid a challenge might be founded. Sir Alexander repeated the song to me, and I recollect the part upon which he laid stress.

(A paper was handed to the witness, and he was asked, whether that was the song?)

A. Yes; and his object in coming to me was, to solicit me to act as his friend upon the occasion.

Q. You mentioned, that, at a certain period of the conference with Lord Rosslyn in the Waterloo Tavern, one of the conditions made by Sir Alexander as to the meeting with Mr Stuart was, that it should be on the Continent. Did he assign any reasons for having it on the Continent?

A. Yes. He considered, if any thing should happen—if they should meet, and if he should hit Mr Stuart, he should suffer much inconvenience from the law of this country.

Q. You mentioned, that, after Lord Rosslyn went to New-haven, you overtook him, and proposed a change of place, to which his Lordship objected; at the same time, authorizing you, at your desire, to speak on the subject to Mr Stuart. Where did you then find Mr Stuart?

A. I called at his house, but found him from home; and as the servant said he would be at home soon, I walked about till I saw him in Charlotte Street.

Q. You mentioned Sir Alexander had seen a legal friend after your interview with Lord Rosslyn. Did you state to Mr Stuart any reason of Sir Alexander's for wishing to change the place of meeting from the Continent to Scotland?

A. Yes; I think I did;—that his legal friend told him it was quite unnecessary to go to the Continent, or even to England, as he was as safe here as anywhere, and rather more so; that the Lord Advocate was as safe as a Grand Jury; and, therefore, his legal friend had advised him not to go to the Continent.

Q. He said he had got this information from his legal friend?

A. My impression is, that this was the reason why he changed his wish as to the place of meeting.

Q. That, in the hands of a gentleman like the Lord Advocate, he would be more safe than in the hands of a Grand Jury?

A. Yes, as safe as in the hands of a Grand Jury.

Q. You mentioned that the parties were carried before the Sheriff late at night, and bound over to keep the peace

within the county. Do you know by whom that proceeding was suggested?

A. In answering this question, I am afraid I must go into some detail in my own vindication.

Mr JEFFREY.—There will be no occasion for mentioning names. We shall put the question in a general way.

Q. Was the proceeding of the Sheriff in consequence of information given him by the friends of the one party, or of the other?

A. By the friends of one of the parties.

Q. Of which party?

A. The friends of Sir Alexander.

Q. And you know this fact?

A. I have every reason to know the fact.

Mr JEFFREY.—We do not want to follow this further. We do not wish, in the slightest degree, to insinuate, that the notice to the Sheriff proceeded from Sir Alexander himself. We believe it was without his knowledge, and against his will and intention.

Mr CUNINGHAME.—Do you recollect any thing said at your meeting with Mr Brougham, of the disagreeable nature of the information given to the Sheriff which had led to the parties being bound over to keep the peace?

A. Yes, I do. There was a great deal of conversation between Mr Brougham and myself on the subject, and we were anxious, as the affair must go on, that it should be proceeded in without delay. We agreed, that the sooner it went on the better, in case of farther interference. I stated myself, that there would be a great deal of talk on the subject, in society,—that one party would accuse Mr Stuart's friends of having done this, and another party would attach blame to the friends of Sir Alexander Boswell.

Q. In the journey from Edinburgh to Queensferry, did any thing pass between Sir Alexander and you as to the meeting being indispensable?

A. Yes, I think there did, in presence of Dr Wood and myself. We three in the carriage talked of the subject, and as Dr Wood did not know the circumstances, there was a sort of explanation given of them to him; and we all agreed that, under all the circumstances of the case, Sir Alexander was in duty bound to receive Mr Stuart's fire, if he came there.

Q. Was the amount of the conversation, that Mr Stuart could not act otherwise than he did?

A. I do not know. We rather talked of what Sir Alexander was bound to do, I think.

Q. Have you any reason to believe whether it was or not Sir Alexander's intention at any period to make an apology to Mr Stuart ?

A. After being with Lord Rosslyn, I spoke to Sir Alexander on the ground, and asked him if he would give way in any respect, and he told me, he did not see the least possibility of it.

Q. Did Sir Alexander explain to you, what he meant to do after firing in the air ? Did he give you any notice of his farther intention ?

A. No.

Q. Did he mean to make any apology then ?

A. My opinion given to him was, that I had every hope the thing would stop there, as that would be the best apology he could make.

LORD HERMAND—Q. Sir Alexander did not say he meant to apologize ?

A. No, he did not. I have no doubt he had the same opinion I had.

MR CUNINGHAME.—When it was arranged between Sir Alexander and you, that he was to fire in the air, was there any intimation of this given to Lord Rosslyn or to Mr Stuart ?

A. None.

Q. Do you recollect the conversation between Dr Wood and you, near Auchtertool, on that subject ?

A. Yes, I felt much responsibility in all the circumstances, and I asked Dr Wood as to giving a hint to the other party. I said I had no doubt this should not be done, and he agreed I was right. I also mentioned the subject to Sir Alexander himself, and he told me decidedly, not to give any hint whatever. He said it would be placing the other party in an awkward situation,—and we all three agreed that no notice should be given.

Q. After Sir Alexander took his station on the ground, did you give him any directions as to the mode of firing ?

A. I went up to him to show him where he was to stand ; and I said, Take care and make your fire in the air as distinct as possible ; I hope there will be no difficulty then in bringing the matter to a conclusion, without any farther firing.

Q. Did you suggest the direction in which he should fire ?

A. I said he should fire at the bank.

Q. Was that in the opposite direction from Mr Stuart ?

A. Yes. It was in the direction where the seconds stood.

Q. Did you observe Mr Stuart receive the pistol from Lord Rosslyn ?



A. I gave one to Lord Rosslyn, who, I suppose, gave it to Mr Stuart, and I gave the other to Sir Alexander.

Q. Did it strike you, from Mr Stuart's manner, whether he had been accustomed to use pistols?

A. I am not exactly a judge of that—as I said before, he presented his pistol steadily and with firmness.

Q. I beg to ask you in general, if Mr Stuart's conduct in the field on this occasion, appeared to you in every respect consistent with that of a man of honour and courage?

A. Certainly.

Q. Have you any reason to know, whether Sir Alexander ever wished his name concealed as the author of the articles in the Sentinel?

A. He stated to me, he did not wish it concealed.

Q. Did he add any thing on that occasion?

A. Yes, he seemed rather to feel that being an anonymous writer was not quite agreeable,—he did not seem to feel comfortable under it, and he said that, when he wrote in the Sentinel first, he sent a letter to the Editor, saying, that if any person came to ask who was the author of such and such articles that happened to have been written by him, if the inquirer said the object was a prosecution, the Editor was not to give up his name,—but if the person said it was to call the author to account for it, the Editor was then to inform his inquirer of Sir Alexander's name.

Q. Did Sir Alexander say, he had given any directions about manuscripts being burned, and that he was surprised they were preserved?

A. No; I do not think he did.

Q. I think you mentioned that Sir Alexander positively repeated two of the verses of the song on the Sunday morning. Did he afterwards, on the Monday after the interview with Lord Rosslyn, or at any time expressly say to you that he was the author of that song?

A. I decidedly understood, he was the author from all of the conversation I had with him.

LORD JUSTICE-CLERK.—What was the direct instruction of Sir Alexander Boswell, communicated to my Lord Rosslyn as to those three writings?

A. My impression is, that I was authorized to state, that any thing signed by himself he would freely acknowledge; but, respecting any thing without his name, he begged not to be interrogated, and declined answering any question.

LORD GILLIES.—Q. Was it with your advice or approbation that Sir Alexander adopted this resolution?

A. It was almost solely by my advice. He himself was rather inclined to acknowledge the authorship.

(In answer to a question from Lord Hermand, witness added,) And I thought it was the most prudent advice which I could give him, as he had made up his mind to make no apology.

Dr GEORGE WOOD *sworn*.

Examined by Mr SOLICITOR-GENERAL.—You are a surgeon in Edinburgh?

A. I am.

Q. Were you called on, on the morning of 26th March, by Sir Alexander Boswell?

A. I was.

Q. What did Sir Alexander say to you?

A. That he was obliged to go out on an affair of honour.

Q. Did he request your professional attendance on that occasion?

A. Yes.

Q. Did you accompany him accordingly?

A. He left my house, and returned in a short time, accompanied with Mr Douglas in the same carriage.

Q. Whither did you, Sir Alexander, and Mr Douglas, proceed?

A. We proceeded to the Queensferry.

Q. And crossed it?

A. And crossed it.

Q. And then went where?

A. To Auchtertool, as I understand.

Q. Whom did you meet there?

A. No person whatever.

Q. Did you proceed to any distance from the village?

A. About three quarters of a mile, after remaining some time in the village.

Q. And then whom did you meet?

A. We passed one carriage on the road. It was before ours, and we passed it. I did not see who was in it.

Q. On the ground whom did you meet?

A. Lord Rosslyn and Mr Stuart. The carriage we were in stopped. Mr Douglas got out; and then Sir Alexander Boswell and I went on some hundred paces farther, and stopped at a gate. Sir Alexander and I got out. By this time Mr Douglas and Lord Rosslyn were a great way off down in a hollow, where I saw them. They seemed looking for a place for some particular purpose.

Q. Did you see Sir Alexander Boswell and Mr Stuart on that place?

A. I think not.

Q. Did you see them afterwards on the ground?

A. Yes; on the ground certainly.

Q. Then what did you do, when you saw them on the ground?

A. Lord Rosslyn addressed me, and said I had better remain where I was. I beckoned to Mr Liston to come to me, and Lord Rosslyn said I had better not go nearer. I said I was at too great a distance, and would much rather go nearer the scene.

Q. And you accordingly did so?

A. His Lordship said I should do in that as I thought proper, and accordingly I did so.

Q. Were you in such a situation as to see the parties?

A. Certainly.

Q. Did you see them accordingly?

A. I did.

Q. Did you see or hear the discharge of pistols?

A. I did.

Q. Were you called up to the ground immediately?

A. I stated to Mr Liston, upon reaching the ground, that we ought to turn our backs and not see the firing; but that instantly on the shots taking place we should get up as fast as possible. On turning round after hearing the firing, I saw Sir Alexander Boswell on the ground. We went up instantly, and found him wounded.

Q. Did you hear one or two shots?

A. Two shots, very close one on another.

Q. You immediately ran up?

A. We immediately ran up, and found that the ball had entered about the middle of the right clavicle, which it had severely fractured.

Q. State what occurred?

A. Two pieces of bone were extracted on the spot; the first by myself, and the second by Mr Liston. Each of us endeavoured to lay hold of and extract other pieces of bone, but we found it impossible to do so. We then proceeded to examine the wound, for the purpose of discovering if the ball could be extracted, or where it was lodged. But we did not find it.

Q. Was it your opinion that it was a mortal wound?

A. At once, I was perfectly decided.

Q. Was Sir Alexander carried afterwards to Balmuto?

A. He was carried afterwards to Balmuto.

Q. And did you attend him to Balmuto?



A. I did.

Q. And afterwards?

A. Yes.

Q. And till he died?

A. Till he died.

Q. When did he die?

A. At half past three o'clock next day.

Q. And of that wound he died?

A. Certainly. It was the cause of his death.

Q. Did any conversation occur in the carriage, in the course of your journey from Edinburgh to Auchtertool, or from Auchtertool to the ground, relating to the subject of the meeting, and what was it?

A. Betwixt Edinburgh and Queensferry, to the best of my recollection, Sir Alexander, in the course of conversation, I think, mentioned, that, in all the circumstances of the case, Mr Stuart could do no less than call him out. I am satisfied that either he or Mr Douglas said so; but I think it was Sir Alexander, and the other, whoever it was, coincided in the opinion.

Q. Go on.

A. I have no recollection of any thing farther on that subject. But, I think, Sir Alexander expressed, in the course of the journey, that he was determined to fire in the air. And, certainly, after leaving Auchtertool, and before arriving at the ground, and when Mr Douglas was getting out of the carriage, Sir Alexander said, Now, gentlemen, I beg you to remark, that it is my final determination to fire in the air.

Q. Is that all the observation Sir Alexander made on the subject?

A. He made none farther that I remember.

LORD HERMAND.—Was there any other person present after the wound was received?

A. Dr Johnstone—I forgot to mention him.

LORD JUSTICE-CLERK.—Was there nobody but you and Mr Douglas present at the conversation you have just mentioned?

A. Nobody else.

*Cross-examined by Mr MONCREIFF.*—You mentioned you turned your back.—Was it before the pistols were presented?

A. Yes; certainly.

## ALEXANDER BOSWELL, W. S. SWORN.

Examined by Mr M'NEILL.—You were acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. For several years?

A. Yes.

Q. Do you recollect, about the month of March last, his desiring some alterations on his settlements, or new settlements to be prepared by you?

A. I marked he did so on the 25th March.

Q. He required you to make those speedily?

A. He expressed a desire I would specify the shortest time in which they could be made out.

Q. Do you know whether those settlements were executed before his death?

A. They were not executed.

Q. Do you know that he had been in London for some considerable time before?

A. Yes—he had been about a month from Edinburgh.

Q. When did he return? What day?

A. On Saturday the 23d of March, late in the evening.

Q. When did you see him last?

A. About 12 o'clock in the evening of Monday the 25th of March.

Q. You never saw him afterwards?

A. I saw him afterwards. That was the last time I saw him in Edinburgh.

Q. Where did you see him last?

A. At Balmuto, on the Wednesday immediately following.

Q. He was then wounded?

A. He was.

Q. Were you there when he died?

A. About an hour before he died.

Q. Was it in Balmuto House he died?

A. Yes.

Q. You are acquainted with his hand-writing?

A. I have seen a good deal of his hand-writing.

(Here the signed letter, with Sir Alexander's name, was shown to the witness.)

Q. Is that his hand-writing?

A. That is his hand-writing.

LORD JUSTICE-CLERK.—Q. What is its date?

A. 7th February.

MR M'NEILL.—We now show witness the song. Is that his hand-writing?

(It was handed to the witness.)

WITNESS.—It is not his hand-writing, to the best of my judgment.

MR M'NEILL.—Look at the address—is this his hand-writing?

A. That appears to have a very little resemblance in the *f*'s, but I do not think it is his hand-writing. The first formation of the *f*'s resembles his hand-writing.

LORD SUCCOTH.—Do you think it is his hand-writing?

A. I should think it is not. I should say, it is not Sir Alexander's hand-writing.

MR M'NEILL.—You say you don't think it is the hand-writing of Sir Alexander; do you mean that it is not written by him at all?

A. I think it is not.

Q. It is not his penmanship?

A. It is quite different from his usual hand-writing. I have had letters written in all the different varieties of hand-writing of Sir Alexander, and I do not think I ever saw any that resembles that.

Q. You mentioned you were with Sir Alexander at twelve o'clock on Monday night. Were you with him when he was apprehended by the Sheriff officers, and bound over to keep the peace?

A. I was.

Q. Did he say any thing which led you to think he knew, or did not know, how that took place?

A. He appeared very angry when he understood a Sheriff officer was in the house. He was agitated, and said he did not think any of the three acquainted with the circumstance would have used him so very ill as to have divulged it.

LORD JUSTICE-CLERK.—I understood Mr Jeffrey to say, he disclaimed all idea of insinuating that the information to the public prosecutor, which led to the parties being bound over to keep the peace, originated from Sir Alexander Boswell.

MR JEFFREY.—Most certainly.

*Cross-examined by* MR MONCREIFF.—Mr Boswell, look at that paper. It is the paper signed "Ignotus." And look at the address upon the other sheet. Are they Sir Alexander's hand-writing?

A. Yes, both of these appear to be Sir Alexander's hand-writing.



Q. Look at the address of the song and of "Ignotus;" compare them together, and say if you think them different?

A. I think I distinguish that difference between the two, that I would call the one Sir Alexander's hand-writing, and the other not. The one is more upright than the other, in particular "Sentinel Office." This to the "Sentinel Office, Glasgow," is in Sir Alexander's hand-writing.

(This shown to the Jury.)

JAMES WALKER SWORN.

Examined by Mr M'NEILL.—You are tutor to Sir James Boswell?

A. Yes.

Q. You have been tutor in the late Sir Alexander's family for several years?

A. Yes.

Q. Are you well acquainted with Sir Alexander's hand-writing?

A. I have seen it frequently.

Q. Do you think that his? (Letter signed "Alexander Boswell.")

A. Yes, the letter is his.

Q. Look at this. (The Whig Song.)

A. It is extremely unlike any of his hand-writing I ever saw. I know his hand-writing.

Q. What is your opinion?

A. I think it is not his hand-writing.

Q. You taught some of the family to write, I believe; is it like the writing of any of the family?

A. No, it is not.

Q. Can you speak to the address also? Is it the same with the rest?

A. The address seems to be the same with the rest.

LORD JUSTICE-CLERK.—You say you have seen Sir Alexander's hand-writing; have you seen him write?

A. I have seen him at his writing-desk, but I do not think I have watched the pen. I think this is his hand-writing. (The paper signed "Ignotus.")

Cross-examined by Mr MURRAY.—Look at the address of that paper. Do you think that Sir Alexander's hand-writing?

A. Not so like it as the body of the paper.

Q. But do you think it is his hand-writing?

A. It has a good deal the character of his hand-writing.

Q. Look at that (Whig Song) and the Address.

(Here there was a considerable pause, during which the witness continued looking at the papers.)

Q. Do you swear that is not his hand-writing?

A. They are very much alike.

Q. Do you see any difference between them?

A. The word "Sentinel" in the one is not like the word "Sentinel" in the other.

Q. But look at the whole direction; and is there any word in the one different from some word in the other?

A. (A pause.) I do not observe any material difference.

Q. Now, Sir, open that song again, and look at it. Will you swear that is not Sir Alexander's hand-writing?

A. I have sworn.

Q. What difference do you see between that and his hand-writing in "Ignotus?"

A. The general character is unlike.

Q. Do you think it impossible that can be his hand-writing?

A. I cannot say.

Q. Sir Alexander wrote a very good hand in general,—a very clear distinct hand?

A. A very distinct hand.

Q. And made very clear strokes in general?

A. Yes; and the character of his hand was round.

WILLIAM HOME LIZARS Sworn.

Examined by Mr McNEILL.

(The letter signed Alexander Boswell and the Whig Song were handed to the witness.)

Q. You have seen these before?

A. Yes.

Q. Do they appear to be the hand-writing of the same person?

A. When I first saw them I thought this was by a different hand from the hand which wrote that. When I first saw them I thought the song was a different person's writing; but, when I again saw them, with other documents, on Saturday, I was very much inclined to alter the opinion I had previously given. Toward the end of the song, on the third page, the similarity of the hand to the writing in the other paper is particularly striking. At the beginning there ap-

pears to have been an attempt to disguise the hand, but in a great degree overlooked towards the end. That struck me on Saturday. There are some particular letters in which the similarity is very striking. For instance, the *B* at Boswell, in the letter, has a very strong resemblance to *B* at Bills, on the second page of the song. The letter *S* at Sentinel, in the letter, and the letter *S* in the word *Sae* (so) at the beginning of the third page of the song, also resemble one another.

WITNESS.—A general remark I would make is, that, in the first page of the song, all the long letters (*y*'s and *g*'s) are generally turned up with a loop. But this propensity in the song, after you pass the first page, is greatly done away with, and many of these letters are turned up differently from the way in the first page; or, in other words, with a dash. Now, in Sir Alexander's ordinary hand, he invariably ends the words, having those long letters, with a dash; and when, in the song, he discovered that he had insensibly got into his usual way of writing, he has carefully gone over these dashed letters with the pen, and converted them into looped letters.

There were also other grounds for my change of opinion—I had a greater number of writings, said to have been written by Sir Alexander Boswell, to compare the song with;—and, if these were shown me, I would point out whole words in the song resembling words in these other writings.

LORD ADVOCATE.—Q. Tell us where it was you saw these documents, and made these comparisons?

A. It was in the Justiciary Office, along with Mr Macbean.

Q. What were the documents with which you made the comparison?

A. There were these I have just mentioned, a Song, and a Letter to Mr Maconochie, subscribed by J. Balfour. In that letter there was the name Stuart, which bears a strong resemblance to the word Stuart in the song.

Mr M'NEILL.—Q. And these were the only grounds for the alteration of your opinion?

A. Yes.

Q. On your first examination of them, you were of a different opinion, and thought the song in a different handwriting from the letter signed Alexander Boswell?

A. Yes.

Cross-examined by Mr MONCREIFF.—Q. Did you see that paper signed *Ignotus*?



A. Yes, I think I did.

Q. Look if you find the word "Stuart," or any of the others there?

(Here a conversation took place, which prevented the question being answered.)

Q. Look at the long letter of two sheets?

(The letter, signed *Ignotus*, and the song were examined by the witness.)

Q. Is it the same hand-writing with the other?

A. I certainly think they are the very same. Those two are the same hand-writing, as far as I can judge. There is evidently a disguise of hand in the song.

LORD HERMAND — Q. You said there appeared to be a disguise at the commencement of the song, and not at the last part of it? What do you mean by disguise?

A. When a person writes in a disguised hand, and has to continue writing a long subject, he forgets himself, and ceases to disguise his hand. It is this absence of disguise which enables me to form an opinion.

WILLIAM SPALDING SWORN.

Examined by Mr M<sup>r</sup> NEILL.

Q. You remember, last March, going with Mr James Stuart to Glasgow?

A. Yes.

Q. Who accompanied you?

A. Mr Stuart and Mr Henderson.

Q. Who is Mr Henderson?

A. A writer in Hamilton.

Q. When did you arrange to go?

A. Mr Henderson and I did on the afternoon of the 9th of March.

Q. And how did Mr Stuart accompany you?

A. We called at Mr Stuart's house, and then, for the first time, I learned he was to accompany us.

Q. What was your object in going to Glasgow?

A. To liberate Mr Borthwick from prison.

Q. When did you arrive in Glasgow?

A. At eleven o'clock at night.

Q. What day of the week, do you remember?

A. Saturday.

Q. What house did you go to, and stop at?

A. The Tontine.

Q. Did you take any steps that night to liberate Mr Borthwick?

A. I believe Mr Henderson went to the jail, but did not get admittance. But I did not go.

Q. Borthwick was not liberated that night?

A. He was not.

Q. When was he liberated?

A. On Sunday night.

Q. Was it for debt that he was incarcerated?

A. Yes, alleged debt.

Q. What share did you take in the liberation of him?

A. I had no farther share in the liberation, than seeing Mr Henderson pay the money.

Q. You are private agent for Mr Borthwick?

A. Yes.

Q. Was it intended or arranged by Mr Borthwick, that he should go back to the Sentinel Office next day, after being liberated?

A. In consequence of a warrant from the Magistrates of Glasgow reinstating him in his property, he was desirous of taking possession next morning of the Sentinel Office, under that warrant.

Mr M'NEILL.—Q. You have not given a precise answer to what I asked. I want to know, whether, before liberating him, it was *arranged* that he should go back to the Sentinel Office?

A. I never saw him before, and I did not know he was to go back to the Sentinel Office.

Q. Did you know of the judgment in his favour at that time you talk of?

A. I knew of it before I went to Glasgow.

Q. But you did not know that, when he was to be liberated, he was to act upon that judgment?

A. I did not know till he was liberated.

Q. Do you know he went there?

A. He did proceed to the Sentinel Office next morning.

Q. I wish you to explain a little more. You say you are an agent for Mr Borthwick—that you went to Glasgow to liberate him, and yet you took no share in liberating him. If you went to Glasgow to liberate him, how did you go there without doing any thing to liberate him?

A. I never saw him till the money was paid to him.

Q. Is Mr Henderson agent for him?

A. He is agent at Hamilton.

Q. What was the object of your going to Glasgow?

A. I went along with Mr Henderson.

**LORD ADVOCATE.**—How did Mr Henderson and you meet?

A. I was employed two months before on business with him.

Q. Tell us how he came to Edinburgh at this time?

A. He came upon the 5th of March to get a suspension and liberation for Mr Borthwick. He did not get the information necessary for this till the Friday. On the morning of the Saturday I prepared a bill of suspension and liberation, with which I proceeded to Mr Miller, Clerk of the Bills. But having learned that the bill could not pass, without an intimation of answers, for 24 hours, it was then resolved between Mr Henderson and myself, in order to prevent litigation and delay, to consign the money directly in the hands of the jailor at Glasgow, in order to procure his immediate liberation.

Q. What time was this?

A. On the 9th.

Q. Was there any reason assigned for liberating that man, at that moment, or that hour?

A. The debt was not due.

Q. That is not an answer to my question. Was any reason assigned for liberating him in that hurried way?

A. None.

Q. You say so. How came Mr Stuart into this matter, Sir? Explain that.

A. Upon the Saturday forenoon, about twelve o'clock, Mr Stuart and Mr Aytoun called at my house, and urged me to get a bill of suspension presented as quickly as possible.

Q. What reason did they give for urging this bill of suspension?

A. To get Borthwick liberated.

Q. What reason did they assign? Did they assign any reason?

A. The wish of the gentlemen was, I should proceed to Glasgow to liberate Borthwick.

**LORD JUSTICE-CLERK.**—Q. Was any reason assigned for taking that step?

A. There was no reason given at that time.

**LORD ADVOCATE.**—Q. Did you understand there was any reason why Mr Stuart interfered in the matter?

A. I did not. I knew from Mr Henderson that Mr Borthwick was to take possession of the Sentinel Office upon his liberation.

Q. You say you knew no reason why Mr Stuart interfered in the matter, but that Mr Henderson—

**Mr MURRAY.**—What the witness knows may be asked.



What Mr Henderson or any other said to him is no evidence at all.

**LORD ADVOCATE.**—I am merely inquiring what Mr Stuart stated as his reason for his interference, or if he assigned any. Did Mr Stuart assign any reason for his interference, and what was it?

**A.** Mr Henderson stated to me, that Borthwick was prosecuted as a partner in the Sentinel Office, and wished to get free from the liability attending that connection. I introduced Mr Henderson to Mr Stuart. Mr Henderson, as Borthwick's agent, had expressed a wish to be introduced to Mr Stuart, to see if Mr Stuart would depart from an action of damages against Mr Borthwick, as the publisher of the Sentinel.

**Q.** What did you do on that occasion?

**A.** On the Thursday Mr Henderson and I were walking in the Parliament House. Mr Stuart passed; and I said to Mr Henderson, there is Mr Stuart; I will introduce him to you. I introduced Mr Henderson to Mr Stuart, and Mr Henderson told him that Mr Borthwick wished to be relieved from the action of damages at Mr Stuart's instance. Mr Stuart said, that would depend entirely upon Mr Borthwick himself,—that he was certain Mr Borthwick was not the person who wrote the libels against him in the Sentinel newspaper—and that, if Mr Borthwick knew and would tell him the names of any of the persons who wrote these articles, he would then consider whether he would desert the action against him or not.

**Q.** Was that all that passed then?

**A.** That was all that passed then.

**Q.** Then you say, that, upon Saturday, Mr Stuart and Mr Aytoun called, to urge you to get the bill of suspension and liberation ready? What did Mr Stuart say was his reason for wishing this?

**A.** He assigned no particular reason.

**Q.** Did Mr Aytoun, at that time, state any reason?

**A.** I cannot exactly recollect what passed.

**Q.** Was any thing said at that time of Mr Borthwick's taking possession of the Sentinel Office?

**A.** No. But it was quite understood Mr Henderson and I were to go to Glasgow to liberate Borthwick, by consigning the money, if bail would not be accepted.

**Q.** Did you contribute any part of that money?

**A.** None.

**Q.** What were you to do in Glasgow?

**A.** I went as Borthwick's agent.

Q. What were you to do there as Borthwick's agent ?

A. Nothing particular.

Q. After going there, the proceedings you mentioned took place, and Borthwick was liberated, and you know he went and resumed possession of the Sentinel Office ?

A. I know he left the Tontine to go to the Sentinel Office.

Q. Did he meet with Mr Stuart there ?

A. Yes.

Q. In your presence ?

A. Yes.

Q. Was that upon the Sunday night ?

A. Upon the Sunday night.

Q. At what hour ?

A. About eight o'clock.

Q. Was Mr Henderson present at that time ?

A. He was.

Q. Was any other person present ?

A. No other person. I am not very sure but Mr M'Gri-gor, writer in Glasgow, was present.

Q. Did any conversation take place then about Mr Borthwick going to the Sentinel Office in presence of Mr Stuart ?

A. I think there was some conversation.

Q. Do you recollect the import of it ?

A. It was at that time that Mr Henderson and myself informed Mr Borthwick he was entitled to take possession of the Sentinel Office at Glasgow.

Q. Was there any thing farther happened ?

A. Mr Stuart left the room soon after that.

Q. Did any thing pass as to what Borthwick was to do on taking possession ?

A. He was to take possession of the office and papers.

Q. You mean manuscripts ?

A. Manuscripts.

Q. When was that arranged ?

A. On the Sunday.

Q. When Mr Henderson, Borthwick, Mr Stuart, and you, were present ?

A. I rather think Mr Stuart was present, but I cannot precisely say.

Q. Are you sure he was present ?

A. I cannot positively say.

Q. Could you swear that he left the room before that took place ?

A. I rather think he was present,—but I cannot be certain.

Q. What was Mr Borthwick to do with the manuscripts ?

A. He was to bring them to me in Glasgow.

Q. Any particular part in Glasgow?

A. He was to put them into my hands in the Tontine.

Q. He was not to take all the manuscripts?

A. As many as would enable him to raise actions of relief against certain gentlemen of the county of Lanark who had established the paper.

Q. Did he take possession, or bring to you any manuscripts?

A. He brought the manuscripts to the Tontine where I was.

Q. When was that?

A. On the morning of Monday.

Q. Had he been in the Tontine that morning before?

A. He slept there.

Q. At what hour in the morning did he bring those manuscripts?

A. About eight o'clock. He did not bring them; they were sent by M<sup>r</sup> Leod and Robertson.

Q. Did he bring any of them himself?

A. He brought none himself.

Q. Did these persons bring the whole of the manuscripts?

A. The whole manuscripts of the Sentinel.

Q. And you suppose that they were the whole manuscripts of the Sentinel?

A. Yes.

Q. Did Robertson bring them into the room where you were?

A. He did.

Q. Into the parlour?

A. Yes.

Q. Did you, and Mr Stuart, and Mr Henderson, occupy all the same parlour?

A. Yes.

Q. Was Mr Stuart there at the time the manuscripts were brought?

A. He was.

Q. Before they were brought, had you any conversation with Mr Stuart that morning regarding them?

A. None.

Q. Had you any conversation with him on the subject of Borthwick at all?

A. None.

Q. When these manuscripts were brought to the room where Mr Stuart and you were, what was done with them?



A. They were opened up and examined by me, by Mr Stuart, and Mr Henderson.

Q. Any body else?

A. No.

Q. Did Borthwick come there soon after?

A. Yes.

Q. Did he assist you in examining the manuscripts?

A. He did not. That was done before he came in.

Q. Did you examine into the hand-writing of any of the manuscripts at that time?

A. Not before Mr Borthwick came. Mr Henderson knew the hand-writing of Sir Alexander. These were taken out and delivered to me, and he kept the rest.

Q. That was done in the parlour of the 'Tontine'?

A. Yes.

Q. Did you examine the rest?

A. At that time I did not know the hand-writing of Sir Alexander Boswell.

Q. And it was not pointed out to you at that time?

A. No, it was not.

Mr M'NEILL.—Q. Did you then see any letter of Sir Alexander Boswell's?

A. I saw a letter of Sir Alexander Boswell's.

LORD JUSTICE-CLERK.—After seeing that letter, you compared it with other letters, did you?

A. I did.

Mr M'NEILL.—Q. What was done with those manuscripts?—Did you take them away from Glasgow to Edinburgh?

A. Yes.

Q. That day?

A. Yes.

LORD ADVOCATE.—Did Mr Stuart go with you?

A. He did.

Q. Do you know whether he had any other business at Glasgow?

A. I do not know.

Q. Look at those manuscripts; see whether those were in the number of the manuscripts which you took? (Here the song and the letter signed Ignotus were handed to the witness.)

A. Yes.

Q. Did you give the possession of those to Mr Stuart?

A. I did once.

*Cross-Examined by Mr COCKBURN.*

Q. You say you introduced Mr Stuart to Mr Henderson, in the Outer-House ?

A. I did.

Q. Was that introduction necessary, in consequence of Mr Stuart not being previously acquainted with Mr Henderson ?

A. Mr Stuart and Mr Henderson were not acquainted before that.

Q. Did you hear Mr Henderson, in the name of Borthwick, offer any papers or information to Mr Stuart, or any information about those libels ? Did Mr Henderson not say that Borthwick was anxious to give up the names of the authors, in order to get quit of the actions brought against him ?

A. I do not recollect.

Q. Do you recollect of Mr Stuart soliciting any such information from Henderson ?

A. I do not.

Q. Were you aware that Borthwick and Alexander had formerly been in trade together as printers of the Sentinel ?

A. Yes.

Q. You said you were aware there had been a judgment of the Magistrates entitling Mr Borthwick to resume possession ?

A. Yes, I was aware of that.

Q. Did you understand that Mr Borthwick—(I do not say the understanding was well founded)—had you any doubt Borthwick was entitled to resume possession ?

A. I had not the least doubt.

Q. You had no doubt. Are you aware that Mr Henderson had any doubt upon that subject ?

A. No, I am not aware that he had any doubt.

Q. That Mr Stuart had any doubt ?

A. I cannot tell.

Q. From what you heard Mr Henderson say, did you understand Mr Stuart was impressed with the conviction that Borthwick was entitled to resume possession ?

A. From what I heard Mr Henderson say, I think he had no doubt he was so entitled.

Q. Did Mr Henderson mention the action before the Magistrates of Glasgow ?

A. He mentioned the action at Borthwick's instance, and the decision in his favour.

Q. You say he mentioned the action at Borthwick's instance and the decision—did you hear him tell Mr Stuart that the decision in that action had become final ?

A. I am not sure that he did.

Q. You mentioned that Mr Borthwick was imprisoned

for a debt that you understood not to be due—Do you know that Mr Henderson said to Mr Stuart that that debt was not due?

A. I do.

Q. Had you any belief (I am not asking you if the belief was well founded) of the purpose for which he was imprisoned for a debt not due?

A. I had.

Q. Do you know why Mr Borthwick was imprisoned for a debt not due?

A. I did not know at the time, but I do now.

Q. And what was the reason?

A. To keep him out of the office.

Q. The L. 50 debt, you say, was paid by Mr Henderson?

A. By Mr Henderson.

Q. Do you know that the L. 50, or any part of it, came, directly or indirectly, from Mr Stuart?

A. No part of it came, directly or indirectly, from Mr Stuart.

Q. Where did it come from?

A. From Mr Henderson.

LORD ADVOCATE.—How do you happen to know that, Sir?  
—How do you know it did not come from Mr Stuart?

A. I was present the whole time, and did not see him give it.

MR M'NEILL.—Do you know where Mr Henderson got it?

A. I do not.

(LORD HERMAND here stopped Mr M'NEILL.)

MR COCKBURN.—On your journey to Glasgow with Mr Stuart and Mr Henderson, was any mention made of Sir Alexander Boswell's name?

A. It was not mentioned.

Q. You went to Glasgow upon a Saturday night,—was any mention made of Sir Alexander Boswell's name in Mr Stuart's presence on the Sunday?

A. None.

LORD HERMAND.—You said no mention was made of it till Monday?

A. Because it was on Monday we first saw his letter. No mention was made of it till we saw his letter. We did not know his name would be found there till we saw his letter.

Q. Did Mr Stuart say any thing upon that occasion?

A. No. He said he had not expected it.

Q. That was saying something.—Did he say any thing more?

A. Nothing more.

MR JEFFREY.—We may have occasion for Mr Spalding again.

(The witness was re-inclosed.)



## EVIDENCE IN SUPPORT OF THE DEFENCE.

(Mr William Henderson, writer in Hamilton, cited as a witness for the prosecution, was called by the Crown counsel, and placed in the witness' box. But after some consultation among the counsel for the prosecution, they stated they had closed their case, and the Lord Justice-Clerk told the witness he might withdraw. Upon which Mr Moncreiff, as counsel for the pannel, said he would begin the evidence for the defence with this witness, and, accordingly, desired the witness to remain.)

## WILLIAM HENDERSON SWORN.

Mr COCKBURN.—The Court and the Jury will take notice that the case is closed on the part of the prosecution, and that this is the first witness for the pannel at the bar.

Witness examined by Mr MONCREIFF.

Q. Are you a writer in Hamilton?

A. I am.

Q. Do you know William Murray Borthwick?

A. I do.

Q. Do you know he was the editor of a newspaper called the Clydesdale Journal?

A. I do.

Q. Have you been employed by him as his agent?

A. I have, since the month of December last. I had been his agent some time before—he had given me up—and then he began again to employ me in December.

Q. Did he put in your possession any papers for a particular purpose?

A. He did.

Q. About what time?

A. I think about the 29th of December, or thereabouts.

Q. For what purpose was it he gave you them?

A. To endeavour to get quit of certain actions of damages.

Q. When you got those papers, did you do any thing with the view of getting rid of the actions?

A. I did. I came to Edinburgh, and consulted a professional gentleman on the subject.

Q. About what time was that?

A. It was in the month of January ; but I am not sure of the particular date.

Q. Had you any communication at all with Mr Stuart at that time ?

A. None whatever.

Q. Did you know Mr Stuart at all ?

A. I did not.

Q. Then when did you first know any thing of Mr Stuart ?

A. It was about the beginning of the month of March.

Q. Had you come to Edinburgh at that time ?

A. I had.

Q. Did you come on Mr Borthwick's business ?

A. I did.

Q. What was it that brought you particularly at that period ?

A. It was to obtain his liberation from jail. He had been imprisoned in Glasgow jail.

Q. Will you tell us how you came to expect to get him liberated ? What was he imprisoned for ?

A. For a debt by Mr Robertson, bookseller in Edinburgh, and by another bookseller there. Diligence had been raised for a large sum, I think L. 180, and it was restricted by a marking on the back to L. 50.

Q. How did you expect to get his liberation ?

A. By a suspension and liberation, as I was satisfied the debt was not due.

Q. Before that imprisonment, were you at all employed about a process against the publishers of the Sentinel newspaper ?

A. Yes, I was.

Q. Do you know there was an action brought by Mr Borthwick about the Sentinel, before the Magistrates of Glasgow ?

A. I know there were two processes brought.

Q. But do you know there was one by Mr Borthwick for obtaining payment of bills ?

A. Yes.

Q. Had it any other conclusion ?

A. It had an alternative conclusion to obtain possession of the Sentinel Office.

Q. Do you know whether any judgment was pronounced on it ?

A. Yes, I do know.

Q. What was the judgment ?

A. It was ordering Alexander, that is, his partner, to make the payment concluded for within a certain space, six days I

believe, and failing his doing so within six days, authorizing Borthwick to take possession of the office.

Q. Have you seen that interlocutor ?

A. Frequently.

(The process was handed to the witness, who read the prayer of the petition as follows :)

“ May it therefore please your Honours to appoint a copy  
 “ of this petition, and of your deliverance, to be served  
 “ on the said Robert Alexander, defender, and him to  
 “ lodge answers thereto within a short space there-  
 “ after ; and on resuming consideration hereof, with or  
 “ without answers, to decern and ordain the said de-  
 “ fender forthwith to deliver to the petitioner valid  
 “ bills, with sufficient security, for the said balance of  
 “ L. 60 Sterling, at nine and twelve months from the  
 “ said 27th of November ; and failing his immediate-  
 “ ly doing so, find that the defender has not imple-  
 “ mented his part of said proffered agreement, and  
 “ that, consequently, the pursuer cannot be held to  
 “ have divested himself of his right, property, and in-  
 “ terest, in said concern, which, accordingly, allow him  
 “ to resume ; or afford him such relief in the premises,  
 “ or to do otherwise farther as to your Honours shall  
 “ seem proper.

“ According to Justice, &c.

“ ALEX. URE.”

Q. See if you can find the judgment ?

(Witness read the judgment as follows :—“ Having resum-  
 “ ed consideration of the case, Finds, That the word ‘ pur-  
 “ suer,’ in the second line of the interlocutor of the 29th  
 “ of January, ought to have been ‘ defender,’ and is, ac-  
 “ cordingly, correctly so written in the renewed order of  
 “ the 4th of this month, and corrects the said interlocu-  
 “ tor of the 29th of January accordingly ; in respect the  
 “ defender has failed to implement the said renewed or-  
 “ der, ordains the defender, within six days from this  
 “ date, to deliver the bills with security to the pursuer,  
 “ concluded for in the petition, and, failing his doing so,  
 “ decerns in terms of the other alternative conclusion  
 “ thereof: Finally, remits to the auditor to tax the pur-  
 “ suer’s expences.

“ 14th February 1822.

WILLIAM SNELL.”



Mr MONCREIFF.—So the other alternative was, finding he was not divested, but might take possession?

Q. Does it consist with your knowledge that that interlocutor became final?

A. His agent in Glasgow told me so.

Q. But do you see any reclaiming petition?

A. There is none.

Q. Do you know that Mr Borthwick, in consequence of that judgment, took possession?

A. Yes, on the 1st March I received a letter from him, saying he had taken possession of it.

Q. When was he put in jail for the debt?

A. He was put in jail that night. He took possession in the morning, or in the course of the day, and was imprisoned on the morning of the 2d.

Q. How long was he in jail before you came to Edinburgh?

A. I came on the Tuesday following, I think on the 5th of March.

Q. You have explained how he was in jail,—and now we come to when you came to Edinburgh to get him liberated. To whom did you apply to get the suspension and liberation?

A. To Mr Spalding.

Q. Had you employed Mr Spalding before, as Mr Borthwick's agent?

A. I had.

Q. Did Mr Spalding prepare a bill of suspension and liberation?

A. He and I prepared it together.

Q. Was it presented?

A. It was.

Q. Did it go on to judgment?

A. Nothing farther was done on it. It was presented merely.

Q. Was it withdrawn?

A. It was withdrawn.

Q. Why?

A. Because it was understood from the Clerk of the Bills, that no order for his liberation could be granted without an answer.

Q. Then what did you resolve to do to effect his liberation?

A. We resolved to consign the money in the hands of the jailor, as the shortest way, under protest.

Q. Who was to consign the money?

A. I was to consign the money.

Q. From money of your own?

A. Yes. I was satisfied his claim was good, and I was to get from him an assignation of his claim of repetition. On coming to Edinburgh, I sent to Lanark to get a certificate whether or not Mr Robertson had reported a sale of Mr Borthwick's effects. I got also a statement of the debt for which Mr Borthwick had been imprisoned on the caption.

(The witness here was stating the particulars of the debt.)

Mr MONCREIFF.—Q. You are giving us the particulars of the debt?

WITNESS.—A. One reason why I was satisfied the debt was not due was, by seeing sums had been marked by the trustee for Borthwick's creditors as paid to preferable creditors, of whom I was one, and I knew I had not been paid.

Q. You were satisfied the debt for which he was imprisoned was paid?

A. Yes.

Q. When were you first introduced to Mr Stuart?

A. On the 7th of March.

Q. Did you ask any body to introduce you to Mr Stuart?

A. I did.

Q. Whom?

A. Mr Spalding.

Q. Did you give any reason for it?

A. I did.

Q. Where was it you were introduced to him?

A. In the Outer-House.

Q. Did you give any reason for wishing to be introduced to Mr Stuart?

A. Mr Stuart had brought an action of damages against Mr Borthwick and other proprietors of the Sentinel, and Mr Borthwick wished to get quit of the consequences of that action—that was my reason for being introduced to Mr Stuart.

Q. When you were introduced to Mr Stuart, you mentioned the subject to him?

A. I mentioned to him the situation Borthwick was in at the time.

Q. You mentioned that he was in jail?

A. Yes; and how he had been put in jail.

Q. And did you explain the state of the process?

A. I did.

Q. Did you mention Borthwick had been imprisoned?

A. I did. It was proper to mention this; and I got evi-

dence that it was at the instigation of Alexander. I have evidence of that in my pocket at this moment.

Q. What day was this ?

A. On Thursday the 7th of March.

Q. What did Mr Stuart say to your statement about getting the process settled ?

A. He said he would make no promises to Mr Borthwick ; that he was satisfied Mr Borthwick was not the person who had written what he called libels upon his character ; that, on Borthwick's giving up the author, he would consider what he should do ; and, that it would depend on Mr Borthwick himself whether he would give up his action.

Q. What reply did you make to that ?

A. I said I had no doubt he would ; for he had asked me frequently to be introduced to Mr Stuart, to inform him he was willing to do so.

Q. Then, did any thing more pass at this time ?

A. I do not think any thing more passed at this time ; I do not recollect.

Q. What did you do farther about the liberation of Mr Borthwick ? When did you go to Glasgow ?

A. On the Saturday following, the 9th of March.

Q. Did you see Mr Stuart again ?

A. Not till the day I went.

Q. That was the Saturday. Now, you saw him that day, before going—Where ?

A. In the house of Mr Spalding—he called there.

Q. Did any body call with him ?

A. Yes ; another gentleman.

Q. Who ?

A. Mr Roger Aytoun.

Q. What passed at this meeting ? What conversation had you then ?

A. I do not recollect.

Q. Was any thing said about the suspension and liberation ?

A. Mr Spalding and I were then preparing it. We did not then know it might not be passed without an answer.

Q. Did Mr Stuart leave you on that occasion then ?

A. Yes, he did.

Q. Did you see him afterwards that day ?

A. Yes.

Q. Where ?

A. In his own house.

Q. Did you go to his own house ?

A. Yes, with Mr Spalding.



Q. Did Mr Aytoun go with you, or was he there ?

A. He went with us.

Q. Was any other person present ?

A. Nobody else.

Q. Had you resolved by this time on withdrawing the bill of suspension and interdict ?

A. Before going to Mr Stuart, we had resolved to go to Glasgow.

Q. Did Mr Stuart know this before you called ?

A. I cannot answer that question.

Q. Did you tell him you were going immediately to Glasgow ?

A. Yes.

Q. What passed about any body going with you ?

A. He said he would accompany us.

Q. Was there any proposal for Mr Aytoun going ?

A. It was proposed, but he said he could not get away.

Q. Was it said he would have gone if he could have got away ?

A. He said so.

Q. And Mr Stuart agreed to go with you ?

A. Yes.

Q. What was Mr Stuart's intention ?

A. Borthwick previously told me, that if he resumed possession after being liberated, he would endeavour to lay hold of the manuscripts that were libels, as he thought he had a right to them,—not to deliver them up, but to show them, in order to get rid of the actions.

Q. Mr Stuart went along with you ?

A. Yes, he did.

Q. Did you mention this to Mr Stuart ?

A. Yes.—And then he went along with us, in order, if Borthwick got those papers, he might take the offer of seeing those manuscripts.

Q. And Mr Stuart went accordingly ?

A. Yes.

Q. Before your going to Glasgow, had any thing been said about Sir Alexander Boswell ?

A. Never—not a word.

Q. It was on the Saturday you went to Glasgow. Was any thing done that night ?

A. I called at the jail that night, but did not get admittance. Then, the next morning, I had a conversation with Borthwick. I told him, Mr Spalding and I had come from Edinburgh, and I was to consign the money. He said, if he

was at liberty, he would resume possession of the office next morning at the usual hour.

Q. Do you know whether Borthwick had any keys in his possession belonging to the office ?

A. No, farther than that he informed me he had.

Q. You did not see them ?

A. No.

Q. Did you get him liberated on the Sunday ?

A. Yes. When I called on him in the forenoon, he wished me to send a note to Hamilton to get down my clerk. When he was first imprisoned, he wished me to get my clerk to take charge of the office during his confinement. I declined to do that till he was liberated.

Q. And did he wish you to do that on being liberated ?

A. He did, and I sent for my clerk.

Q. Had you occasion to apply to any body besides the jailor before you got the liberation ?

A. I applied to Mr Alexander M'Grigor, writer in Glasgow.

Q. For what purpose ?

A. To speak to Mr Reddie. He is the town clerk, the assessor.

Q. Did you go to Mr Reddie ?

A. I did not. Mr M'Grigor went.

Q. Was the liberation got ?

A. The money was consigned, and Borthwick got his liberty.

Q. Where did Borthwick go to when he got out of jail ?

A. He came to the Tontine where we were.

Q. Did he come into the room where you were ?

A. Yes, he did.

Q. Who were all present ?

A. There were Mr Stuart, Mr Spalding, myself, and Mr Borthwick.

Q. Did he state then what he intended to do ?

A. Yes, he did. He said he would go to the office in the morning, resume possession of it, and endeavour to get possession of the manuscripts. It is proper to mention, that, on the day he took possession of the office first, he got some manuscripts, and sent them to me at Hamilton.

Q. That was on the 1st of March ?

A. On the 1st of March, before I came to Edinburgh.

Q. You had had no communication with Mr Stuart at that time ?

A. None whatever.

Q. Did any of these manuscripts show the name of Sir Alexander Boswell?

A. None.

Q. You mentioned, that, in the Tontine, on the Sunday evening, he told you he would go in the morning and get possession. Did you advise him, or did he ask you whether he had a right to take possession of them?

A. He asked, and I said he had a right, under the decision of the magistrates.

Q. Did Mr Spalding concur with you?

A. He did. There were papers taken away on the Sunday the week before.

Q. Did Alexander make any complaint about that?

A. None that I heard of.

Q. Was there no application to the magistrates about it?

A. None that I ever heard of.

Q. You say Mr Stuart was in the room. Was he in the room the whole time?

A. He went to bed, and left Mr Spalding and my clerk, who had come down.

Q. When you were considering this matter, did Mr Stuart give any instructions?

A. None that I heard of.

Q. Did Mr Stuart give Borthwick any instructions?

A. None that I heard of.

Q. Did Borthwick sleep there?

A. He did.

Q. In the morning did Borthwick go to the Sentinel Office, or did any thing occur to make you believe so?

A. He went to the Sentinel Office with my clerk, and a man of the name of Loudon Robertson, to be witnesses of what he did.

Q. Did he come back again?

A. A short time after he went away, about half an hour, Loudon Robertson came to the Tontine with papers. These papers, he said, were from Mr Borthwick. On looking at them they turned out to be manuscripts of the newspaper.

Q. Did Borthwick come back himself?

A. He did. He said he was prevented from inspecting the manuscripts in the office by the violence of David Alexander, brother of his partner.

Q. Did he bring any more papers with him?

A. I believe he did.

Q. Were those papers examined in the Tontine?

A. They were examined in the Tontine. And Borth-



wick wished to send them back, after taking out those manuscripts he wanted, when my clerk came in, and said it was needless, as he had been turned out by the violence of David Alexander and Tod his agent. But Borthwick wished, after taking out the manuscripts wanted, to return the mass of papers.

Q. Then what became of the mass of papers?

A. It was resolved to put them into the hands of Mr Alexander Ure, Borthwick's agent in Glasgow, who was instructed to institute a complaint to the Magistrates of Glasgow, stating that those were in his hand, and the violence that had been used; there was such an action raised.

Q. When?

A. That very day.

Q. When you were examining those papers, did you discover that Sir Alexander Roswell's name was there?

A. After the various manuscripts of a particular hand-writing were put all together, on examination it was discovered that those manuscripts were believed to be in the hand-writing of Sir Alexander Boswell.

Q. Was there any letter with his name subscribed to it?

A. Borthwick was out for some time, and, on coming back, he was shown those manuscripts, and the post-mark of some of them. Some of the marks were cut out, and others were obliterated with ink. On examining the post-mark, I thought it was Edinburgh; but, on asking Mr Borthwick when he came in, he said it was Mauchline, and that the author he believed was Sir Alexander Oswald. But he added, if you will look among certain papers, you will find a letter from the gentlemen to whom I allude.

Q. And did you find that letter?

A. We found that letter. That letter was found, and it bore the signature of Sir Alexander Boswell. I was not acquainted with the hand-writing.

Q. When Mr Stuart saw the name of Sir Alexander Boswell, did he say any thing?

A. Nothing that I recollect of.

Q. You mentioned he never had spoken of him before?

A. He was astonished, he said he had never suspected him.

Q. What became of the selected papers?

A. They were put by me into the hands of Mr Spalding, at Mr Borthwick's request.

Q. As his own agent?

A. As his own agent ; and he was specially instructed not to part with them to any person but Mr Borthwick.

Q. But they had been shown to Mr Stuart. You did not understand that the injunction was to prevent them from being shown to Mr Stuart if he wished ?

A. They were to be shown to any person having an interest in them ; but not to be given away by Mr Spalding.

Q. You paid the money for liberating Borthwick ?

A. I did.

Q. From your own money ?

A. From my own proper funds.

Q. Did you speak to Mr Stuart about assisting you to pay the money ?

A. Never.

Q. Did he offer to assist you to pay the money ?

A. Never.

Q. Have you any person bound to repay it to you ?

A. No—except Borthwick. I have an assignation to his claim of repetition, and the claim against him.

Q. Have you any body else liable to your claim ?

A. Nobody else.

Q. You did not know Mr Stuart till you were introduced by Mr Spalding on the Thursday ?

A. I never saw him but once before.

Q. Had you ever any cash transaction with Mr Stuart ?

A. Never.

*Cross-examined by Mr M'NEILL.*—Q. Do you know that the process before the Magistrates of Glasgow was advocated ?

A. I know it was advocated subsequent to Borthwick's liberation.

Mr MONCREIFF.—Do you remember when it was advocated ?

A. On the 13th or 14th of March.

Q. After the liberation and papers were procured ?

A. I am sure it was after that.

JAMES GIBSON *sworn.*

*Examined by Mr COCKBURN.*

Q. You are acquainted with Mr Stuart ?

A. I am.

Q. And with Mr Roger Aytoun, writer to the signet ?

A. Yes.

Q. Did you ever perceive any articles in the Sentinel

newspaper, or in the Beacon, which you regarded as offensive to you or to Mr Stuart?

A. A great many, Sir.

Q. Had you and Mr Aytoun ever any conversations about discovering the authors of those paragraphs?

A. Very many.

Q. Mr Aytoun is the agent of the family of Hamilton?

A. He is, Sir.

Q. Do you recollect of any attack being made on Mr Stuart in the first number of the Sentinel?

A. Certainly I do.

Q. Which you considered a false attack?

A. A most atrocious libel.

Q. You have heard, I presume, of a person of the name of Borthwick, one of the editors of the Sentinel?

A. I have.

Q. Do you recollect having any conversations with Mr Aytoun in the beginning of March last, about that person?

A. Mr Aytoun told me about the beginning of March.

Q. Was Mr Stuart present on this occasion?

A. He was certainly present.

Q. Tell us the purport of what took place when Mr Stuart was present?

A. Mr Aytoun told us he understood Borthwick had got possession of all the manuscripts of the libels that had appeared in the Sentinel.

Q. That was about the beginning of March?

A. One of the first days of March.

Q. Did that turn out to be true at that time?

A. For some days I conceived it to be true; but, on the last Thursday of the Session, Mr Stuart told me it was a mistake;—that Borthwick had got possession of them, but had left them locked up in a safe; and that he had, since that time, been thrown into prison.

Q. Was that on Thursday?

A. The Thursday before the rising of the Court.

Q. Had you any farther talk with Mr Stuart about this discovery?

A. On the Thursday, the conversation was pretty general in the morning; and afterwards Mr Stuart told me, that the agent of Borthwick had come to town, and waited upon him in the Parliament House, and had offered to give up the manuscripts of the libels against him, if he would withdraw his action of damages.



A. Did Mr Stuart say he had agreed to abandon the action?

Q. He said he had positively refused to come to any understanding on the subject, but had desired them to show him the manuscripts of the libels, when he would consider what should be done.

Q. You were aware, at this time, that Mr Borthwick was in jail at Glasgow?

A. I had heard he was in jail, and had been for some days.

Q. Did you give any advice to Mr Stuart how to act?

A. Not on the Thursday; but, on the Saturday, we had farther conversation, and I understood there was a proposal to give in a bill of suspension and liberation on the ground of the debt for which Mr Borthwick had been incarcerated not being due. I said I thought it was a pity to temporise in a matter of this kind,—that I thought, from the character I had heard of Alexander, he would not scruple to take means to get possession of, and destroy, the manuscripts. I said to Mr Aytoun and Mr Stuart, that, in my opinion, some one should go to Glasgow instantly, pay the debt, procure Mr Borthwick's liberation, and secure the papers.

Q. Did you offer to pay the debt yourself rather than this should not be done?

A. I did not offer; but I said, I would much rather pay the debt than run any farther risk of losing the papers.

Q. Had you been consulted about a suspension and liberation for Borthwick?

A. They were talking of giving in such a bill, which I thought was temporising a great deal more than was necessary.

Q. Were you aware there had been an action or process carrying on at Glasgow between Borthwick and Alexander, as to Borthwick's right to resume possession?

A. I was. I had been told that the Magistrates had decreed in Borthwick's favour, and that Alexander having failed to fulfil the conditions which had been stipulated between the parties, Borthwick was authorized by the Magistrates to resume his rights as a partner.

Q. And did you understand that the interlocutor was final?

A. Yes.

Q. Had you any doubt of Borthwick's right to resume possession?

A. None.

Q. Do you know if Mr Stuart had any doubt ?

A. I never heard any doubt stated by any body.

Q. In short, your only fear, and cause of great dispatch, was, lest Alexander should destroy the papers ?

A. My only reason.

Q. Do you know whether Mr Stuart went to Glasgow or no ?

A. I knew afterwards. I did not know, when I parted with him, that he was to go to Glasgow.

Q. When did you see him again ?

A. On Monday, about four o'clock.

Q. Did he give you any account of his proceedings ?

A. He told me that Borthwick had put a number of papers into the hands of his agent, which he (Mr Stuart) had examined ; and that, to his astonishment, he had found that Sir Alexander Boswell was the author of the libels against him.

Q. He stated he not only found, but was astonished at finding, that Sir Alexander was the author ?

A. He was astonished to find that Sir Alexander was the author.

Q. Had you and Mr Stuart, before this, much confidential conversation about these libels ?

A. Daily for months.

Q. Had you many conjectures about the author ?

A. Many.

Q. Did you ever suspect Sir Alexander as the author of them ?

A. Never.

Q. Do you know if Mr Stuart wished to compare any of the manuscripts he had found with the articles in the Sentinel newspaper ?

A. I gave him my copy of the Sentinel for that purpose.

Q. You were possessed of a copy ; how did you get it ?

A. From seeing the libel in the first paper, I considered what the nature of the publication was likely to be, and I caused it to be regularly purchased for me in Glasgow, and marked.

Q. I wish to identify the copy of the paper you showed Mr Stuart.

(The paper was handed to the witness.)

A. That is the copy I purchased.

Q. He got that from you to compare the manuscripts with ?

A. He did, when he returned it to me, he told me he had marked all the copies of which he conceived the manuscripts to be in the hand-writing of Sir Alexander Boswell ; and they are marked in that copy.

Q. You are aware this discovery led to a challenge of Sir Alexander by Mr Stuart ?

A. Yes.

Q. You are aware that that affair took place on the morning of the 26th of March ?

A. Yes.

Q. When had you seen Mr Stuart previously ?

A. At eleven o'clock of the evening before.

Q. Did he then tell you, on what day he believed that that meeting was to take place ?

A. He told me it was to take place on the Thursday following.

Q. That is, two or three days after you were talking to him ? In what condition, in what state of mind, I mean, was he at the time ?

A. Particularly calm and collected.

Q. Did he appear to be actuated by any malice or rancour against Sir Alexander ?

A. Not the least

Q. Did he describe his feeling at all to you ?

A. He described himself as being placed in an unpleasant situation, from which it was utterly impossible to relieve himself in any other way than by the mode he had taken.

Q. When did you next hear any thing more from Mr Stuart ?

A. About eleven o'clock, next day, his clerk called upon me, and delivered a sealed packet.

Q. Was there any letter to you with that sealed packet ?

A. There was.

Q. Was the sealed packet addressed ?

A. It was addressed to me.

Q. Do you know the contents of the letter ? Have you the letter now ?

A. I have it with me.

Q. Have you any objection to show it ?

A. Not the least.

Q. Read it, if you please.

“ MY DEAR SIR,

“ The other party saw the necessity of instant action, owing to circumstances not known when I saw you. Be so



kind, if I am completely done for, as to have the inclosed conveyed, according to direction, within four days after this day, not sooner than the third.

“ Be quiet till you hear.

“ Yours most sincerely,

“ JA. STUART.

“ *Charlotte Street,*

“ *Four o'clock Tuesday Morning.*”

Received at 11 o'clock A. M. 26th March 1822.—J. G.  
(Addressed on back, “ *Most Private. Jas. Gibson, Esq.*”

WITNESS.—The inclosure contained a packet addressed to Mrs Stuart.

Q. Is the inclosure there? I should wish to see that inclosure.

A. I should mention, that, after the meeting had taken place, Mr Stuart came to my house; and when I saw him safe, I gave it back to him. He opened it in my presence, and I have it here.

Q. Be so good as read it.

(This was a short note to Mrs Stuart, dated Tuesday morning, which Mr Gibson read.)

Q. When did you next see Mr Stuart himself?

A. At two o'clock of that day.

Q. Upon Tuesday?

A. Tuesday, after the affair.

Q. Where did you see him?

A. When coming down St Andrew's Street I saw him coming out of my chambers; and, when he saw me, he turned short, and instantly ran up into my room.

Q. What took place then?

A. I followed him as fast as I could. I shut the door, and asked what had happened. He ran into a corner of the room, covered his face with his hands, and burst into tears. When he was a little composed I again put the question. He said he was afraid Sir Alexander was mortally wounded. He was in the most complete agony of mind.

Q. Did he give you any account of what had happened on the field?

A. After some time, I asked him some questions, and he answered those questions I put to him.

Q. Did he express any wish, that he had missed Sir Alexander?

A. He did.

**Q.** What did he say?

**A.** He said he had taken no aim. He wished to God he had taken an aim, for, if he had, he was certain he would have missed him—that he had never fired a pistol, on foot, in his life before.

**Q.** Did he say that any thing particular had passed between him and Sir Alexander on the ground? He said that he had asked Lord Rosslyn, if it would be proper in him to show the usual mark of civility to Sir Alexander, and that Lord Rosslyn having approved of it, he accordingly made an advance, and was in the act of putting his hand to his hat when Sir Alexander turned his head from him.

**LORD ADVOCATE.**—I am extremely averse to interfere, but this is not a matter which touches the prisoner; and I submit to the consideration of the gentlemen opposite, how far they should proceed with it.

**Mr JEFFREY.**—I am quite sure Mr Stuart was mistaken insupposing that Sir Alexander had intentionally turned from him. I infer from the testimony of Lord Rosslyn, that there was an advance of that kind, but that it had not been observed by Sir Alexander. More than that we never proposed to establish.

**Mr COCKBURN.**—Did you give Mr Stuart any advice as to what he should do?

**A.** I said that he must instantly leave the country,—that his remaining would only subject him to very unnecessary imprisonment.

**Q.** Was he himself eager to go, or to remain?

**A.** He positively refused at first to go. He said, wherever he went, he would be miserable, till he knew Sir Alexander's fate, and he would not go till he should know it.

**Q.** Did you urge him again in spite of that, to go?

**A.** I pressed him in the strongest manner. I said, no time should be lost in giving him information of Sir Alexander, but he must leave the country. He at last agreed. He said Mr Liston had a better opinion of the case than Mr Wood, and he hoped, in God, it would turn out to be well-founded.

**Q.** Had he made any preparation in the way of money for going?

**A.** No. I went to the bank, and got money for him.

**Q.** That was necessary for his going?

**A.** It was necessary for his going.

**Q.** He made it a condition of his going that you would give notice of his being willing to stand trial?

A. He did. Afterwards I met him at his own house, and the last words he said were, Remember to give notice that I shall be ready to stand trial.

Q. Did you give notice to that effect to any public officer?

A. Next morning, I saw Mr Sheriff Duff between 11 and 12 o'clock, and I gave him the notice.

Q. Verbally?

A. Verbally.

Q. That was upon Wednesday the 27th?

A. Wednesday the 27th.

Q. Did you receive any notice soon thereafter upon that matter?

A. Upon Thursday the 28th, I sent a notice to the Star and Advertiser newspapers, that that notice had been given, and, on the 29th, I received a note from Mr Rolland, Crown Agent, saying, that it had been stated in the newspapers, that Mr Stuart had given such notice, and desiring to know to whom he had given the notice.

Q. Have you Mr Rolland's letter with you?

A. I believe I have.

Q. Please read the letter?

*“Edinburgh, 29th March 1822.*

“DEAR SIR,

“In consequence of the paragraph in the Edinburgh Advertiser of this date, stating, that Mr James Stuart, W. S. had announced to the proper quarter, (as the paragraph implies,) that he was ready to stand his trial whenever he is called upon, I am directed by the Crown Counsel, who are aware that you had communication with Mr Stuart after Sir Alexander Boswell was wounded, to apply to you to know whether Mr Stuart authorized any such notice and intimation to be made for him, and if so, to whom such notice has been given.

“I am, DEAR SIR, your most obedient humble Servant,

“JAMES GIBSON, Esq. W. S.

AD. ROLLAND.”

Q. Did you answer that letter?

A. I answered it the same day.

*“Edinburgh, 29th March 1822.*

“In answer to your letter of this date, I must beg to refer you to the conversation I had with Mr Sheriff Duff, on Wednesday last.— I am,” &c.

Q. Did you ever make any other applications for getting the trial on?

A. I wrote a letter either on the 4th or 5th of April, beg-



ging the trial might be brought on; and I received a letter from Mr Rolland on the 6th.

“ *Edinburgh, 6th April 1822.*

“ DEAR SIR,

“ I prefix a copy of a letter I received from the Solicitor-General this forenoon.

“ I am, DEAR SIR, your most obedient Servant,

“ JAMES GIBSON, Esq.

AD. ROLLAND.”

The Solicitor-General's letter referred to was as follows :

“ *Edinburgh, 6th April 1822.*

“ I understand that Mr Gibson has intimated to you, that Mr Stuart is ready to stand trial when indicted.

“ You will take an opportunity of explaining to Mr Gibson, that it is not intended to raise an indictment against Mr Stuart until he is in custody, and has been judicially examined. It is obvious that, by keeping out of the way till the day of trial, he would avoid a judicial examination, and there is no reason for departing in this case from the ordinary rules of criminal procedure. It is not customary to raise an indictment, without previously examining the criminal, except in cases where the party has escaped, and does not mean to stand trial.”

Q. Did you answer that letter ?

A. I saw Mr Rolland, and remonstrated on the subject. And I afterwards wrote him upon the 15th of April, as follows :

“ I beg again to say to you, what I communicated to Mr Sheriff Duff on the 27th of March, and to you in my letters of 29th March and 5th April, that Mr Stuart will appear to stand trial, whenever the Crown Counsel shall think proper to indict him.

“ Since the date of these letters, I have received yours of the 6th, with a copy prefixed of a letter from the Solicitor-General, in which he desires you to inform me. that it is not intended to raise an indictment against Mr Stuart until he is in custody, and has been judicially examined—that by keeping out of the way till the day of trial, he would avoid a judicial examination,—and there was no reason for departing in his case from the ordinary rules of criminal procedure. It was not customary to raise an indictment without previously examining *the criminal*, except in cases where the party had escaped, and did not mean to stand trial.

“ I beg to submit this resolution to the farther consideration of the Crown counsel. You know that, in England, the invariable practice in cases of this kind is to indict instantly, without regard to the *person accused* being in custody,—and, if I am not mistaken, a practice has prevailed, in the few cases that have occurred in Scotland, even more favourable to such persons.—I am told, that in different cases, particularly that of Glengarry, indictments have been insisted in without the person accused being in custody ;—and that, in other cases, such as Lieutenant Charles Grant for killing Mr Fowke, and Captain Maclean for killing Lieutenant Shand,—not only was there no imprisonment of the parties, but no indictment was ever raised.

“ In these circumstances, I trust that the Crown counsel may see the propriety of Mr Stuart being instantly indicted, when they may depend upon his appearance. Indeed, nothing but a trial can clear up this most unfortunate business in a manner at all satisfactory to him. But, if the Crown counsel shall still determine not to indict Mr Stuart until he be in custody, I hope that they will give an assurance that there shall be no unnecessary delay, but that the trial shall be brought on as soon as can reasonably be expected. Trusting to your giving me an immediate answer, I remain,” &c.

Q. Did you get an answer ?

A. I received an answer on the 22d of April in the following terms :

“ 22d April 1822.

“ In a letter I have this day received from the Lord Advocate, he directs an indictment to be forthwith raised against Mr Stuart, and served ; and that, when served, the trial will proceed on the expiry of the usual *induciae*, unless Mr Stuart should himself ask for delay, or the ends of justice should demand it. I am,” &c. “ P. S.—The Court of Justiciary does not meet till Monday the 20th of May, and that day at present is allotted for the trial of Alexander M. Anderson. Probably Monday, the 27th May, may be taken for Mr Stuart’s trial.”

Q. Did you return an answer to that letter, or again write to Mr Rolland ?

A. I wrote several letters to, and had several meetings with, Mr Rolland. I wrote him again on the 18th May as follows :

“ 18th May 1822.

“ I am extremely mortified to learn from your clerk to-day that Mr Stuart’s trial is again delayed.

“ You know that, on the 27th of March, I intimated to Mr Sheriff Duff that Mr Stuart would be ready to take his trial whenever it was thought proper to bring it on. This resolution I again communicated to you on the 4th of April, and very often afterwards.

“ On the 24th of April the Lord Advocate assured a friend of Mr S.’s that he had some time before written from Weymouth to desire that the trial be proceeded in without delay; and that, in answer to a letter from Scotland, of date the 16th of April, saying that there was no reason for hurrying it on, his Lordship had again written, repeating the order to proceed as soon as possible.

“ On the 22d of April you wrote me that you had received the Advocate’s orders to raise the indictment forthwith, and that it would be proceeded in without delay, “ unless Mr Stuart should himself ask for delay, or the ends of justice required it;” and you add in a P. S., “ that probably the 27th of May may be taken for Mr Stuart’s trial.” You afterwards wrote that it could not take place sooner than the 3d of June; I am now informed by your clerk, that, “ on account of the Solicitor-General having only returned from London five days ago, the trial cannot take place sooner than the 10th of June,” and no assurance has been given that it will certainly take place on that day. I need not repeat to you what I have so often expressed—the unceasing anxiety of Mr Stuart to have the trial brought on as speedily as possible, and the extreme prejudice which he suffered in many points of view from the delay.”

Q. Tell me, in general, did you continue, to the last, endeavouring to bring on this trial?

A. I did.

Q. You are not aware, Mr Stuart absconded or fled from justice?

A. Certainly not.

Q. Were you ever employed to act as agent for Mr Stuart since the indictment was raised?

A. Never. I never intended doing so.

Q. You have known Mr Stuart a great many years?

A. Most intimately.

Q. In public and in private?



A. In public and in private.

Q. You will be so good as say, what your opinion of his character is, principally as to peaceableness and good temper?

A. He is one of the kindest-hearted, and best-tempered men I ever knew.

Q. Have you ever known him given to quarrelsomeness?

A. Never.

Q. Do you know him to be a person, or the reverse, who is apt to make his politics disturb his private friendships?

A. I never knew him introduce politics so as in any way to interfere with private friendship.

Q. What is the date of the last letter, written by you, relative to bringing on this trial?

A. 18th May.

Q. Please, Sir, read that letter once more.

(The letter again read by the witness.)

Mr MONCREIFF.—You have a volume of the Sentinel in your hand?

A. Yes.

Q. You spoke of the first number of Sentinel. What article in that number did you refer to?

A. It bears the title “James Stuart and the Lord Advocate.”

Q. You are aware Mr Stuart went to France?

A. Yes.

Q. You have mentioned repeated solicitations were made by you on his part to bring on the trial?

A. Yes.

Q. Was this in consequence of the instructions when he left you, or did he renew them?

A. They were originally upon his verbal instructions, and I afterwards received a letter, hoping I had given the necessary intimation.

Mr LISTON, Surgeon, *sworn*.

Examined by Mr MONCREIFF.—Do you know Mr Stuart?

A. Yes.

Q. Do you remember his calling upon you about the end of March last?

A. Upon the 26th.

Q. At what hour?

A. At an early hour in the morning, a little before five.

Q. Did he mention the business on which he called?

A. He did not. He wished me to go to the country with him.

Q. Did you go along with him?

A. Yes.

Q. In the course of the journey did he explain the purpose of his journey, or did you find it out?

A. I understood what the object was. He did not tell me till I got to the other side of the water. I guessed his purpose.

Q. Did he mention the party he was to meet?

A. Upon the other side of the water he did.

Q. Did he say any thing particular about what might be the event?

A. He said there was no other course left for him but the one which he had taken; and said, he had no animosity towards Sir Alexander Boswell. He seemed to apprehend danger to himself.

Q. Did he say any thing as to his wish to kill his opponent or otherwise?

A. He said Sir Alexander was a relation of his,—that he had no animosity against him,—that he did not wish to injure him in any way. He mentioned something of a duel which had taken place between Captain Ayton and another gentleman, and hoped no greater damage than happened on that occasion would be the result of the intended meeting, one of the parties to the duel he mentioned having been wounded in a toe.

Q. Where did you go to?

A. Hillside.

Q. And what took place at Hillside? How long did you stay there?

A. About an hour.

Q. What was Mr Stuart engaged in doing there?

A. He was engaged among his papers. He wrote some, to one of which I put my signature. I understood it to be his settlement. He put some of the papers in a drawer in the sideboard.

Q. Did you see him put up any keys?

A. He put up a number of papers. I was not attending much to what he was doing.

Q. Did he give you any note or memorandum?

A. On the road to Auchtertool he did.

Q. Did he tell you any thing about it?

A. To read it in case he should be hit.

Q. Have you got that memorandum?

A. Yes.

Q. Will you be so good as read it to us if you please?

(Witness read as follows:)

“ If I am hit, and it is wrong to take me to Edinburgh, I wish, if not risking too much, to be taken to Hillside, where every thing is comfortable, and where I will recover far sooner than any where else.

“ If my senses remain, and I am not moribund, send as fast as possible for my wife, with all due caution. She is, of all her family, that one who would the least wish me to live with a dishonoured name:

“ I have a dislike to be over-bled.

“ J. S.

“ *Hillside, Tuesday morning,  
March 26.*”

Q. Were there any arrangements made about the duel, at Hillside, before you left it?

A. Not that I know of.

Q. Then you went along with him to Auchtertool?

A. Yes.

Q. How did Mr Stuart appear at that time; was he much agitated, or was he cool?

A. Quite cool.

Q. Did you see the gentlemen take their ground when it was measured?

A. Yes.

Q. Did you see them fire?

A. I did not. I turned my back.

Q. You saw Sir Alexander afterwards?

A. Yes.

Q. And did you do any thing professionally?

A. I removed some portion of the broken bone, and examined the wound as far as could be done.

Q. Did you remain or did you go away after that?

A. I remained and assisted in carrying him to Balmuto. I remained there about an hour and a half.

Q. Then you came away, leaving Dr Wood there, I suppose?

A. Yes.

Q. And you returned to town along with Mr Stuart?

A. Mr Stuart had gone before; I returned to town by myself.

THOMAS ALLAN, *sworn.*

Examined by Mr JEFFREY.—Do you know Mr Stuart?

A. I do.



Q. You heard of the unfortunate meeting between him and the late Sir Alexander Boswell recently after it happened ?

A. I did.

Q. You heard of his death in London ?

A. I was told he was dead the day before I left London.

Q. Had you then heard of his death from any certain authority ?

A. I had no certain knowledge of his death at that time ; but it was reported in such a manner, that I rather suspected it was the case.

Q. You had heard Mr Stuart had gone to France ?

A. I heard he had gone the day before.

Q. You saw some of Mr Stuart's friends in London, and carried some message to him ?

A. I did.

Q. Where did you find him ?

A. At the Hotel De Meurice at Calais. I carried him his passports. The object of my journey was partly to convey his passports to him. I had learnt from Sir Ronald Ferguson that he had left London without his passports.

Q. How did Mr Stuart receive you, and what conversation had you with him ?

A. It was necessary to give that explanation of my coming there ; and, after I put the passports into his hands, he said to me, What news do you bring me ? I immediately understood from him that his question related to Sir Alexander Boswell ; and I stated, that I was sorry to say the news were bad for him. Then, said he, Sir Alexander is dead. I replied, such was the report in London the day I left it.

Q. Did he say this in a calm, or in an agitated and disturbed manner ?

A. With a great deal of anxiety in his manner. When I told him he was dead, he was in very great agitation, and burst into tears.

Q. Did any thing more pass ? What did you say upon that ?

A. He continued in great distress. I thought it right to recall him a little to himself, and pointed out to him the manner the business had been forced upon him. True, he said, but remember his poor wife and family.

Q. And did he continue agitated and distressed ?

A. He certainly did for a considerable time.

Q. Were you much with him ?

A. We were together for a fortnight or three weeks.

Q. Did he still appear to be much distressed at what had happened?

A. His mind was constantly returning to it. Whenever the conversation flagged, he seemed constantly absorbed in thought.

Q. You were the first person brought him this intelligence?

A. Certainly.

Q. Did Mr Stuart express any desire to remain out of the country longer than was necessary to save himself from imprisonment?

A. Quite the contrary. He always expressed his anxiety to return, and stand trial, if his friends would allow him.

Q. Was there any report that it was the intention of Government to apply to the Government of France to have Mr Stuart taken up?

A. I believe such a report existed.

Q. Was any application of the kind made to your knowledge?

A. No. While in Paris, Mr Stuart received a letter from Mr Gibson, stating the delay of the trial. Mr Stuart wished to have an interview with the English Ambassador. He waited on Mr Crosby, and explained to him the object of his wish to have an interview with the Ambassador himself. He went to the Ambassador's, and had an interview with Sir Charles Stuart.

Q. Did you go with him?

A. I went to the Ambassador's Hotel with him, but I did not see Sir Charles.

Q. Do you know if he afterwards came to Calais to be in more near intercourse with his friends?

A. He did.

Q. Did you know he wrote to the Ambassador to that purpose?

A. He wrote a letter before he left Paris to the Ambassador, intimating his intention of removing to Calais. \* I saw that letter, and know it was delivered. It stated he would always be ready to attend, when called upon.

JOHN CLERK, Esq. of Eldin, Advocate, *sworn*.

Examined by Mr MONCREIFF.—

Q. Do you know Mr Stuart?

A. Yes, I am acquainted with Mr Stuart.

\* This Letter will be found in Appendix, No. XII.

Q. Did you meet with him in London soon after this event took place?

A. Yes, Sir.

Q. Did you afterwards see him in Paris?

A. Yes.

Q. When you saw him in London, it was not known whether Sir Alexander was dead or not?

A. It was not known.

Q. When you saw him in Paris, did you give him the intelligence of Sir Alexander's death?

A. I did not give Mr Stuart the intelligence of the death personally, but I have reason to believe I was the means of communicating the intelligence to him; and I saw him soon afterwards.

Q. How did he appear to be affected by the intelligence of the death of Sir Alexander?

A. He appeared to me to be very deeply affected. I saw him twice before the intelligence of the death was received, and he was apprehensive bad news might arrive; but when I saw him after the intelligence of the death had been communicated to him, he appeared to be very deeply affected indeed. He shed tears, and was much moved. He was not so much so afterwards, though he remained serious.

ROBERT MACONCHIE sworn.

Examined by Mr MURRAY.—

Q. Were you acquainted with the late Sir Alexander Boswell?

Q. I was.

A. You were well acquainted with him?

Q. Very well acquainted with him.

A. You received a letter from him in the month of March last?

A. I did.

LORD ADVOCATE.—I hope the Counsel for the defence will not deem it necessary to have that letter read: it is a private confidential letter. If they do, there it is.

Mr JEFFREY.—I can assure the Court and the learned Gentlemen opposite, that we have no desire to do more than we feel to be necessary for the defence of the prisoner; and I would be sorry to do any thing that could excite pain to the friends of the deceased, or doubt of the propriety of our conduct in the minds of the learned Gentlemen opposite, whose



good opinion I am anxious to possess. On the purport of that letter I will make but one remark. The letter shows that Sir Alexander considered himself as liable to the call he received, as bound to answer it, and particularly a call at the instance of Mr Stuart,—that, at the time he wrote that letter, he contemplated the possibility of putting Mr Stuart's life in hazard. And we, therefore, think it material to prove this, and to have the letter produced also, as another specimen of Sir Alexander's penmanship, in order to complete the proof of the hand-writing, and to show, *comparatione literarum*, that the other documents founded on are genuine.

With these views, whatever my own inclination may be, I cannot abstain from calling for production of that letter. And I hope I shall not be thought to have done anything improper or unnecessary on this occasion.

LORD JUSTICE-CLERK.—What is the date of the letter?

A. The 24th of March.

MR MURRAY.—When you received it, did you understand it to be from Sir Alexander?

A. I supposed it to be so, and I answered it to Sir Alexander.

Q. Did you ever receive any subsequent communication from Sir Alexander Boswell?

A. No, none.

MR COCKBURN.—All of us, the Counsel for Mr Stuart, are of opinion, that every word of that letter is necessary for his defence, and ought to be read.

(The letter, which will be found in the Appendix, No. IX. was read.)

Dr COVENTRY sworn.

Examined by Mr JEFFREY.—

Q. Are you acquainted with Mr Stuart, the pannel at the bar?

A. I am.

Q. Have you been long acquainted with him?

A. Eighteen years.

Q. Have you known him in public and in private society?

A. Very well in both.

Q. I ask you what is your opinion of his temper and disposition, especially as to violence or moderation.

A. His temper is of the very best.

Q. Have you had occasion to meet him in pretty large meetings, where there was talk and raillery going on?

A. Yes.

Q. Is he a safe man to joke or tease a little?

A. Perfectly safe.

A. Very conciliating in his disposition and manners?

A. Very.

Q. Did you ever happen to see him where there was any disposition to quarrel among others?

A. Yes.

Q. And how did he comport himself?

A. He was always disposed to peace.

Q. Did you know the late Sir Alexander Boswell?

A. Very well.

Q. Had you been long acquainted with him?

A. For about twenty years.

Q. Had you ever any correspondence with him?

A. A great deal of correspondence.

Q. Did he attend your lectures?

A. I believe he did.

Q. Are you acquainted with his hand-writing?

A. Yes.

(The signed letter, the song, and the letter signed Ignotus, were shown to the witness.)

Q. Look at the address of the one dated "Dumbarton." Is that his hand-writing?

A. It is his.

Q. The letter signed Alexander Boswell—is that his genuine hand-writing?

A. Yes.

Q. There is a single sheet—a metrical composition—look at it, and turn to the address?

A. The beginning of the song is less like his hand-writing; but the end becomes more like it. But I believe the whole to be his. The B's are the same, and the C's and Y's throughout the paper are the same.

(Other papers here shown to the witness.)

Q. Have you seen those papers before?

A. No.

Q. Look at the address of the song, and of the letter signed "Ignotus." Do they appear the same?

A. I think they are quite the same hand-writing.

Q. Look at that letter?

CROWN COUNSEL.—What letter is that?

Mr JEFFREY.—We have hitherto only been examining the hand-writing of the documents libelled, and produced by the prosecutor. Along with our defences, and in our defences, we explain the purposes for which we bring forward

certain other manuscripts; two more, one signed by the fictitious name of "Mark Tod," that which I have now in my hand, and the other headed on the top, "The late Lieutenant James Stuart." And we have stated, both in the defences, and in the opening to-day, that Mr Stuart was decided to require the explanation of and to come to the meeting with Sir Alexander Boswell, not only on account of the evidence libelled, but on account of other attacks, the evidence of which was in his hands at the time that Lord Rosslyn communicated with Sir Alexander and Mr Douglas. If we find no objection to it, I intend to prove that these two, being original articles of what were published in the *Sentinel*, are also in the hand-writing of Sir Alexander Boswell.

MR M'NEILL.—If these documents are merely for establishing the identity of Sir Alexander's hand-writing, we do not object.

MR JEFFREY.—We shall take no such objection. I intend to found upon them in corroboration of our statement, that beside the papers taken by Lord Rosslyn to Mr Douglas and Sir Alexander, there were other writings of Sir Alexander's offensive and injurious to Mr Stuart. He obtained the copies of other articles, in reference to which he thought himself justifiable in calling on Sir Alexander to avow whether he was the author of what had been founded upon.

LORD ADVOCATE.—We certainly mean to object to this course. We submit to the Court, that the only documents which can bear upon this case as a justification of the gentleman at the bar, are those which were founded upon, and produced, and stated to the late Sir Alexander Boswell, and as to which he was called to stand to the consequences. And we humbly submit, that this gentleman is not now to produce documents which were not produced to the gentleman now deceased, and as to which no duel took place. It is quite plain, if these had been founded upon, Sir Alexander might either have denied them to be his, in consequence of which no evidence of any kind, according to Lord Rosslyn, would have been received to the contrary, or he might have made such an apology with respect to them as would have been satisfactory. Now, to bring forward these documents in justification of the conduct of the prisoner at the bar, would be a most indecorous proceeding, and such as cannot be allowed at this stage of the proceedings.

LORD JUSTICE-CLERK.—In the first place, the Court must hear the defences. Let us hear the defences read, and see if these documents are therein referred to.



(Here the defences were read.)

**LORD HERMAND.**—The Prosecutor is not allowed to prove any thing that is not in the indictment ; but can it be said a pannel is confined to any thing a Prosecutor is willing to produce ? He has here produced the articles mentioned to Sir Alexander Boswell ; but is he entitled to limit the productions to what might appear to him to be of an injurious nature. Unless we go some centuries back, we cannot receive such a rule.

**LORD JUSTICE-CLERK.**—I see no difficulty here. The present question relates to articles which are alleged to be the manuscripts of other articles in the publication alluded to, and which the prisoner says he will prove to be of the hand-writing of the deceased. No doubt the Public Prosecutor has founded upon certain articles in the hand-writing of the deceased, or some of which he admits, and others not, to be of his hand-writing, and which are alluded to in the conversation which preceded the duel. But, most unquestionably Mr Stuart, standing upon his defence, cannot be confined to those papers produced by the Public Prosecutor, but may extend his defence to other papers which he conceives to have been of the hand-writing of the deceased. It does not appear to me that he can be restricted to the papers produced by the Public Prosecutor.

**LORD GILLIES.**—It is quite clear to me that the pannel is entitled to prove his defence. I coincide with the opinion your Lordship has given.

**Q.** Dr Coventry, look at the hand-writing of that paper, signed “ Mark Tod,”—does it appear to you to be Sir Alexander Boswell’s hand-writing ?

**A.** I think it is his hand-writing.

(Another paper, “ The late Lieutenant James Stuart,” was handed to the witness.)

**Q.** Have you formed any opinion as to the hand-writing of that ?

**A.** It is the same hand-writing.

**Q.** On examining those papers, you are satisfied they are the same hand. Have you seen them before ?

**A.** I think them the same hand ; but I did not see them before.

**CHARLES DALRYMPLE GAIRDNER sworn.**

**Examined by Mr JEFFREY.**

**Q.** Where do you live ?

A. At Kilmarnock.

Q. You are a manager of the Banking House of Hunter and Company ?

A. Yes.

Q. Were you well acquainted with the late Sir Alexander Boswell ?

A. Yes.

Q. You had served in the same troop of cavalry ?

A. Yes, I had.

Q. For many years ?

A. For six years.

Q. Did you correspond with him ?

A. Yes ; and I had occasion to know his hand-writing otherwise.

Q. Did he do business with your bank ?

A. He did business with our bank at Ayr.

Q. But you know his hand-writing. Have the goodness to look at that letter ? (The signed letter was handed to the witness.)

Q. Do you take that to be his genuine hand ?

A. That is his hand.

(The witness was then asked to look at the letter signed " Ignotus.")

Q. Does that appear to be the same, or a different hand ? Look at that other ? Is that the same hand-writing ?

A. It appears to be the same hand-writing.

(The song was handed to the witness.)

Q. Look at the latter part of that ? Is it the same hand ?

A. This writing was formerly shown to me, and, at first sight, I could not identify the hand-writing at all ; but, upon comparing it, and examining it minutely, I am satisfied it is the hand-writing of Sir Alexander Boswell, particularly the latter part of it. The first part of it is disguised ; the latter part of it, I am certain, is of his hand-writing.

Q. Compare the address of the song with that of the other papers lying by you ? Do they appear to be different ?

A. They appear to be of the same hand.

Q. Would you know the address to be in the hand of Sir Alexander ?

A. I would know it to be the hand-writing of Sir Alexander.

Q. Look at that paper signed " Mark Tod ?"

A. I conceive that also to be the hand-writing of Sir Alexander Boswell.

Q. Next look at the paper with the title "The late Lieutenant James Stuart?"

A. I think that also is Sir Alexander's hand.

Mr JEFFREY.—We have three or four witnesses yet as to the hand-writing.

ADAM DUFF, Esq. *sworn*.

Examined by Mr MURRAY.—Q. Do you recollect certain proceedings before you at the instance of Mr Alexander, with concurrence of the public prosecutor, to recover certain papers which he alleged had been taken from the Sentinel office?

A. Yes, I do.

Q. When did that take place?

A. About the end of March.

Q. Do you recollect Mr Spalding being examined before you as the agent for Mr Borthwick, and ordered by you to produce certain papers which he said had been taken from the Sentinel office?

A. Yes.

Q. You ordered him, and he produced them?

A. Yes.

Q. They were delivered under protest?

A. Yes.

Q. Is that your signature along with Mr Spalding's?

A. This is the docquet that Mr Spalding and I affixed upon the papers. (Witness read the docquet signed by him and by Mr Spalding.)

Q. Look at that paper. (Shown the paper entitled "The late Lieutenant James Stuart.") Is that one of the papers marked by you and Mr Spalding?

A. It is.

Q. Look at that. (Shown "Mark Tod.") Is that another of them?

A. Yes, this is one of the papers marked by us. The docquet is as follows. (Reads the docquet.)

Q. That is the docquet affixed by you and Mr Spalding at the time?

A. Not exactly at the time. The papers lay under my custody two or three days till the docquets were put on and signed.

Q. Were you examined as a haver to produce these papers?

A. Yes, on Thursday last.

Q. Were they then produced by you?

A. I could not produce them, because, some day betwixt the 5th and 10th April, a petition was presented to me in



name of the Lord Advocate, to have the papers forwarded to the Crown Agent, to be produced on the trial of William Murray Borthwick at Glasgow.

Q. And you had delivered them?

A. I ordered them to be delivered to the Crown Agent, who signed a receipt for them on the back of the Lord Advocate's petition.

Mr MONCREIFF to the Lord Advocate.—We trust your Lordship is now satisfied that we have proved these documents?

The LORD ADVOCATE.—By no means.

Mr MONCREIFF.—Then we shall call Mr Spalding.

Mr JEFFREY to the witness Mr Duff.—Q. Do you remember of the parties Stevenson and Stuart being bound over to keep the peace?

A. Yes, I do.

Q. The subject was on account of a publication in the Beacon newspaper?

A. Yes.

Q. Do you recollect of Mr Stuart calling on you subsequently, stating that he continued to be assailed by publications in that paper, and that he then put it to you that these publications should be inquired into by you and put a stop to, or interdicted?

A. I recollect of his calling on me for that purpose.

Q. And you declined to interfere?

A. I did not think that that was the proper course to be adopted, because it might appear to be an undue interference on my part with the liberty of the press.

Mr JEFFREY to the Court.—The letter signed "Mark Tod" will be found in No. 17. of the Sentinel newspaper at p. 133. The clerk will read it at the conclusion of the evidence for the pannel; and in the same way he will read the article, "The late Lieutenant James Stuart," which will be found in No. 20. of the Sentinel, p. 126. We say that the manuscripts of these publications are holograph of Sir Alexander Boswell.

WILLIAM SPALDING recalled,

And examined by Mr MONCREIFF.—You told us, when you were lately before us, that you brought away from Glasgow some of the manuscripts of the Sentinel newspaper, and carried them to Edinburgh, after which you were obliged to produce them before the Sheriff?

A. I did.

Q. Now, look at that paper, (shown the paper signed

“Mark Tod,”) and look at the docquet at the end of it. Is that one of them?

A. It is.

Q. Look at that one also, (shown “The late Lieutenant James Stuart.”) Is that one of them?

A. It is.

Q. These were in your possession?

A. They were.

Q. Did you produce them to Mr Stuart?

A. Once, I did. At least the one signed “Mark Tod” was so produced by me to Mr Stuart.

Q. Had he seen them before, when you were examining them?

A. He had.

Mr MONCREIFF to the Court.—We now refer to the first number of the Sentinel. After that, we refer to the process of damages at the instance of Mr Stuart against Borthwick and Alexander, the printers and publishers of the Sentinel newspaper; and particularly to the last article of the answers for the defenders in that action to Mr Stuart’s condescendence.

JUSTICE-CLERK.—Was that answer put in, and does it form part of the process, after it came judicially before the Jury Court; or was it lodged in the process while it remained in the Court of Session?

Mr COCKBURN.—It was only lodged the other day, after the process was transmitted to the Jury Court. No Judge of the Jury Court ever saw it. We desire to have read by the clerk the 7th, 14th, and 15th articles of that answer.

(The articles were then read by the clerk, as in the Appendix.)

GEORGE BRUCE, Sworn by LORD SUCCOTH.

Examined by Mr JEFFREY.—Are you a messenger at arms?

A. Yes.

Q. Were you employed, in execution of a warrant, to bring Sir Alexander Boswell and Mr Stuart to the Sheriff on the night of the 23d March last?

A. I was.

Q. At what o’clock was it?

A. About eleven o’clock. I went to Sir Alexander’s house, and on inquiring for him, I was told he was in bed; and the servant said he was unwilling to disturb him. I told him the person wished to see him, who was to call on him in the even-

ing. The servant then went up stairs, and in a little Sir Alexander came down. He was told he was my prisoner.

Q. How did he take it?

A. He was very unwilling to come along with me at first, but at length said he would accompany me in a few minutes. He said to me, What if I should return and say he was not at home? I told him I could not do it; and that he must come with me.

Q. He went at last?

A. He wished to go up stairs for a few minutes.

Q. Did he go?

A. Yes.

Q. Did he stay long?

A. Nearly ten minutes. I sent in a message to say I could not stop longer.

Q. Did he make any remark or observation of what he understood this arrest to be about?

A. On the way to the Sheriff, he said, some of his friends must have given this information;—that they had done it for good, but it was the worst thing they could have done for him, as it would oblige him to go and live on the Continent, if, — and he stopped, and said nothing more.

LORD KINEDDER SWORN. Examined by Mr JEFFREY.

Q. May I ask your Lordship if you are acquainted with Mr Stuart?

A. Perfectly well.

Q. Have you been long acquainted with him?

A. I cannot exactly say; I should think three or four and twenty years. Certainly above twenty.

Q. Pretty intimately acquainted?

A. Extremely so.

Q. You have known him both publicly and privately?

A. Yes.

Q. So that you have met him in the country, as well as in town?

A. Yes.

Q. May I ask, what opinion you have formed of Mr Stuart, in point of respectability, general character, and gentlemanly conduct?

A. During those twenty years, I have been very much connected with Mr Stuart professionally, and likewise privately; and certainly, in all my lifetime, I never knew a more perfectly good-tempered, kind-hearted, amiable man, nor a safer companion.



Q. You are aware that Mr Stuart takes a considerable share in politics. I think he has not the good fortune to have agreed with you on political subjects ?

A. On subjects of that kind, we differed very decidedly indeed.

Q. I introduced the observation, in order to ask whether you considered him as liable to be tainted with personal hostility against those who differed with him in political sentiments ?

A. Certainly not ; very much the reverse.

Q. You never found him make difference of political opinion any bar to your cordiality in private life ?

A. No. I never, in any communication I have had with Mr Stuart, had the smallest difference with him in private life.

Q. Perhaps you may recollect an occurrence that happened in Fife some years ago, when, by some accident or cause, his name was omitted in the commission of the peace ?

A. I have heard of what occurred at that time.

Q. You will perhaps recollect the tenor of the resolutions adopted at a meeting held, in consequence, on that occasion, to get his name replaced ?

A. No farther than that it was for the purpose of having Mr Stuart's name restored.

Q. Was a resolution passed expressive of the opinion the meeting held of his character ?

A. Yes.

Q. Was it unanimously and cordially adopted by the meeting ?

A. Yes. It was at Lord Moray's. It was in a small committee at Lord Moray's, at which I was present.

Dr ROBERTSON BARCLAY Sworn.

Examined by Mr JEFFREY.

Q. Are you acquainted with Mr Stuart, the pannel ?

A. Very well.

Q. Have you known him for many years ?

A. Above twenty years.

Q. You reside in his neighbourhood in the country ?

A. Within eight or ten miles of him.

Q. In the same district in Fife ?

A. Yes.

Q. Have you had frequent occasions to meet him in public and private ?

A. Yes.

Q. What is your opinion, and, so far as known to you, the general opinion, of his character for respectability and ho-

nour, but chiefly in respect of temper—I mean as to his being peaceable or quarrelsome?

A. His character is as respectable as that of any gentleman in the county; and as for temper, I have never known a man better tempered.

Q. Do you remember the occasion of Mr Stuart's name being omitted in the new commission for the peace of the county, and of a meeting being called in order to have it replaced?

A. Yes.

Q. Did you attend that meeting?

A. I did.

Q. Were the resolutions generally adopted?

A. They were. It was unanimously resolved to apply to the Lord-Lieutenant of the county to restore his name to the commission.

Q. Resolutions were proposed on that occasion?

A. Certainly.

Q. Was there a considerable attendance on that occasion?

A. It was a meeting more numerous than usual.

Mr JEFFREY.—I beg your attention to what I am going to read.

(The Resolutions were then read by Mr Jeffrey. \*)

Mr JEFFREY.—There is a gentleman who sits at the bar, Mr Erskine of Cardross, to whose testimony being taken as to Mr Stuart's character, I fancy there will be no objection, although he has been present during this trial. (No objection stated.)

Mr ERSKINE Sworn.

Examined by Mr JEFFREY.

Q. Are you intimately acquainted with Mr Stuart, who is sitting by you?

A. I have been so from his infancy up to this moment.

Q. Were you connected together in your education?

A. We are very nearly connected by blood. At an early age we were very much together, and so we have continued to be in after life.

Q. You have continued intimate since?

A. Intimate till the present time.

Q. What is your opinion, upon oath, as to his character for honour and respectability, and more particularly as to disposition and temper—whether is he disposed to seek or avoid quarrels?

\* See Appendix, No. III.

A. As to disposition, he is particularly mild and gentle. I have ever been of opinion he has more of the milk of human kindness in him than any person I ever met with. I never heard him make an ill-natured remark of any person, in the course of my life, on any occasion whatever.

Mr WILLIAM GULLAND Sworn.

Examined by Mr JEFFREY.

Q. You reside in the western district of Fife?

A. Yes.

Q. Are you well acquainted with Mr Stuart?

A. Yes.

Q. Have you known him for a long period of time?

A. Yes.

Q. And met him both in public and on private occasions?

A. Yes.

Q. Have you commonly gone along with or against him in political votings?

A. Always against him.

Q. I think you acted as an agent for General Wemyss in the canvass for the county in the year 1806?

A. I did what I could for my friend.

Q. Mr Stuart was engaged for Mr Ferguson of Raith in the same occupation?

A. Yes.

Q. In the county meetings do you not usually meet with Mr Stuart?

A. I do.

Q. At district meetings?

A. Yes.

Q. From what you know of this gentleman, in the way of friendship and opposition, will you give us your opinion as to his character generally, and particularly as to his disposition and temper?

A. His character is good, and his temper also good, as far as I know him.

Q. You know he held a lieutenancy in one of the Yeomanry Cavalry troops?

A. Yes. He gave up his commission in 1819. I served with him about twenty years in that troop.

Q. Was he very zealous and attentive in the duty of that troop?

A. Very zealous and very attentive.



Q. Did he appear to make any distinction at the mess, or any where, on account of political differences of opinion ?

A. Never ; he rather discouraged any tendency to dispute on politics.

FRANCIS WALKER, W. S. Sworn.

Examined by Mr CUNINGHAME.

Q. How long have you known the prisoner ?

A. Thirty years and better ; intimately for twenty.

Q. You and he have been decidedly opposed to one another in political sentiments ?

A. We were always good friends, and generally of the same views, except as to politics.

Q. Did he appear to you a person who allowed political differences of opinion to interfere with his private sentiments of friendship and regard in private life ?

A. I never differed with him in private life.

Q. And were you in the habit of meeting with one another both in town and country ?

A. Frequently.

Q. What is your opinion of his demeanour in private life, particularly as to disposition and temper ?

A. He is a remarkably good tempered man,—not a man likely to give or take offence rashly upon any occasion.

Q. Did you always consider him as a safe companion ?

A. I did.

Q. More given to make up than widen breaches ?

A. Certainly.

WALTER COOK, W. S. Sworn.

Examined by Mr JEFFREY.

Q. Have you been long acquainted with Mr Stuart ?

A. Yes, I have, twenty-three or twenty-four years at the least.

Q. Have you been in an intimate state with him most of that time ?

A. Yes, I was in a society with him at a very early age—and I have been always on a very pleasant footing with Mr Stuart.

Q. I think Mr Stuart and you have not quite agreed in politics ?

A. Not altogether.

Q. Did that ever make any difference between you ?

A. Never in the least, Sir.

Q. Did you know any man in whom political difference makes less in private friendship ?

A. I can only state, as to Mr Stuart, I am not aware it ever made any on his mind. I have often differed with Mr Stuart in opinion, but no difference of political opinion ever created any impression on my mind against Mr Stuart, or any difference in friendship betwixt us.

Q. You were rival competitors for an honourable office a few years ago,—that canvass was conducted with good humour ?

A. I very often had occasion to say, no canvass could be more fairly and honourably conducted. Mr Stuart was the successful candidate. Every part of Mr Stuart's conduct was as honourable and as fair as it was possible to be. The general opinion was, that the canvass would run very nearly betwixt us. Our respective friends were very active for a period of more than two months. This made no change on Mr Stuart ; on the contrary, it rather increased our friendship.

Mr JEFFREY.—What you have stated is most honourable to both. Upon that may I ask you, Whether you have ever seen in Mr Stuart a disposition to quarrel with others ?

A. I have never seen any instance to make me think Mr Stuart was at all given to quarrel.

RICHARD MACKENZIE, W. S. SWORN.

Examined by Mr COCKBURN.

Q. Have you known Mr Stuart long ?

A. Rather more than thirty years.

Q. Intimately ?

A. Intimately.

Q. In all sorts of business ?

A. Yes.

Q. In the intercourse of private and public life ?

A. Yes.

Q. What is your opinion of his character in reference to peaceableness of disposition ?

A. He is a very amiable and remarkably good tempered and agreeable man.

Q. Have you ever known him addicted to quarrel ?

A. No.

Q. Or ever indulge in any vindictive feelings ?

A. No.

Q. I believe you have not the fortune to agree in politics,—has that tended at all to embitter your intercourse with one another ?

A. I have been for twenty years a member of a club along with him, supping together frequently, and I do not think I ever saw him a moment out of temper during the whole time.

HAY DONALDSON, W. S. Sworn.

Examined by Mr MONCREIFF.

Q. You have been well acquainted with Mr Stuart ?

A. Yes.

Q. How long ?

A. Nearly thirty years.

Q. How did you first become acquainted ?

A. I think we became acquainted at College about 1793 or 1794.

Q. You have had a good deal of intercourse together ?

A. Very much indeed.

Q. I think you were at one time in partnership ?

A. From 1804 to 1816, about eleven years and a half.

Q. In the course of that time you have seen a good deal of him ?

A. Very much.

Q. How did you find him in point of temper and disposition ?

A. I always considered him as eminently distinguished for command of temper, kindness of disposition, humanity, and every correct and honourable principle.

Q. Were you accustomed to hear him speak harshly of people ?

A. I do not remember a single instance of his applying a harsh epithet to any man whatever, either in a public or private capacity.

Q. I need not ask you, then, if you consider him a safe companion ?

A. Of all men I ever met with in the intercourse of society, I should the least hesitate to apply that character to Mr Stuart.

Q. I believe you do not agree in politics ?

A. Upon that subject we entirely differed in opinion.

Q. Have you been accustomed to converse with him on political topics ?

A. Freely and unreservedly.

Q. Without fear of this leading to any disagreement or difference between you ?



A. Never; I have often conversed with him, and heard him converse, on political subjects; but neither in his conversations with myself, nor in that more general society in which I was accustomed to meet him, did I ever observe him indicate any keenness or intemperance on political subjects.

Q. The partnership between you is dissolved?

A. It was dissolved about six years ago.

Q. How was that done? did you part in good humour?

A. It was done very much upon my own suggestion; and, I believe, Mr Stuart did me the honour to express his concern and regret that we should separate. But neither in the discussions preparatory to that event, nor in the arrangements consequent on it, did he ever, on any occasion, act to me otherwise than in perfect good temper.

Q. And you have continued friends ever since?

A. We have, down to the present time.

Mr JEFFREY.—It is quite unnecessary to go on with this. With the reading of the papers proved, we will close our case.

Mr COCKBURN.—I wish to read to the Jury the offensive passages in the articles of the Sentinel, that have been proved to be in the hand-writing of Sir Alexander Boswell. I shall first read three or four lines of the Song. I shall read from the printed copy. I read the two passages pointed at by Lord Rosslyn. The words are—

There's stot-feeder Stuart,  
Kent for that fat-cow—art,  
How glegly he kicks ony ba', man;  
And Gibson, lang chiel, man,  
Whase height might serve weel, man,  
To read his ain name on a wa', man.

And they crack and we tak, &c.

Your knights o' the pen, man,  
Are a' gentlemen, man,  
Ilk body's a limb o' the law, man;  
Tacks, bonds, precognitions,  
Bills, wills, and petitions,  
And ought but a trigger some draw, man.

And they crack and we tak, &c.

Mr Cockburn then read passages from each of the articles, "Mark Tod" and "The late Lieutenant James Stuart." \*

\* These articles are printed in the Appendix.

Mr COCKBURN.—There is one other passage which I wish to read from the *first* number of the Sentinel.

Mr M'NEILL.—This article is not alleged to be in the hand-writing of Sir Alexander Boswell, and it is the subject of the action in the Jury Court, now in dependence.

*The passage was then read by Mr Cockburn. (See Appendix, No. V.)*

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Mr JEFFREY.—After what has been done, I trust I shall be considered as sufficiently discharging my duty in the eyes of the public and of my client, in now saying, that I here close the evidence in his behalf.

LORD ADVOCATE.—*Gentlemen of the Jury*,—After the length of time which you have been called upon to give your attention to this interesting and important case, it will be satisfactory to you and to the Court, that the course which I am now about to pursue, sanctioned, as I trust you will admit it is, by the convictions on my own mind, and supported as it is by the opinion of my learned friend the Solicitor-General, and of the other gentlemen with whom I act, that that course is at least calculated to save you a considerable portion of time in listening to any statement of mine, and that it will probably save some portion of the time of my learned brother who is to address you on the part of the prisoner.

Gentlemen, before I precisely point out what that course is, I trust I shall be forgiven for stating, that, in whatever view this case is looked to by you, or by the country, sure I am that no doubt can arise on the propriety of the present prosecution. It has been, and I trust ever will continue to be, the invariable course when the life of any individual, however low in society, has been taken from him by violence, that the circumstances connected with that crime should form the subject of a criminal investigation before the Criminal Court of this country, and that the person against whom the accusation lies shall have a verdict upon his case

either establishing his guilt, or acquitting of all crime ; and if this be a salutary practice in the general case, sure I am you will concur with me that this is a case in which such investigation is eminently required, where an individual has suffered, it certainly must be admitted, by illegal violence, where that individual was in the prime of life, the father of a numerous family, a zealous and active magistrate, a Vice-Lieutenant of a considerable county, a person gifted with talents and qualities alike useful to society, and to endear him to the circle of his private acquaintance. When such a person falls by violence, assuredly it is expedient for the justice of the country that the case should be investigated with minuteness. This, indeed, is right, independent of what is due to the justice of the country,—in justice to that unfortunate family, which has suffered a loss never to be repaired ;—right to the unfortunate gentleman at the bar, in order that the whole circumstances of the case may appear before the world, and that the whole guilt he has committed may be known ; that its precise extent may be ascertained, or his innocence may be established,—that he may either suffer for the crime he has committed, or receive a verdict of acquittal at your hands for his innocence.

The libel now before you charges the gentleman at the bar with having committed the most heinous offence known to our law, that of deliberate murder, in having, on the day specified, gone out on purpose to fight a duel with Sir Alexander Boswell, at whom he intentionally discharged the contents of a loaded pistol, by which he was killed. My honourable friend who opened this case complained, that the indictment aggravates the case, by stating, that the prisoner fled from justice. Now, for myself, I do regret that the expression in question was used in the indictment. It is, however, right for me to state, that it is the invariable practice to introduce that statement in all cases where an individual has not conformed to the common practice of giving himself up, and being examined judicially. That this gentleman did flee from justice is a fact which this day has been completely proved. I do not, however, mean to say that he absconded in the common sense of the term,—that he did not mean to stand his trial. I trust, when you look at the circumstances, though attempts have been made to have it supposed otherwise, it will distinctly appear, that on this occasion there has been every disposition on the part of the public prosecutor to do the gentleman at the bar full justice in bringing him to trial, as soon as he could rightly be brought



to trial ; that when the true and real circumstances of the case are known, no ground for imputation on the public prosecutor will be found to exist. It has been stated as the reason given by the Crown counsel at the time why they thought this indictment should not instantly be tried, that the gentleman at the bar ought first to surrender and have undergone a judicial examination. And most certainly, if the common and uniform practice observed in similar cases had been attended to here, this person would not have been brought to trial till he had returned to the country ; nay, even advantage might have been taken this day of his attendance to desert this diet, for the purpose of having him examined before being brought to trial.

But that is not the course which has been pursued. I cannot think of detaining you with relating the circumstances that led to any little delay that has taken place. But they are such as to make me feel in my own mind justified for that delay, and to satisfy me, that the gentleman at the bar has been brought to trial as early as he possibly could, consistently with what is due to the justice of the country. I early expressed my anxiety that he should be brought to trial, and sure I am he suffered no hardship, or any thing of which he can complain, in the meantime.

You heard something said of an application made to foreign courts regarding him, as if means for apprehending him abroad had been taken. But there is no ground for that insinuation. No means whatever were adopted to pursue this course ; nor has any thing more been done than allowing him the privilege of which he has this day availed himself, of sitting himself at your bar, without one moment's imprisonment. I will not dilate farther on this circumstance ; for I am confident, that my learned friends opposite, knowing the case in all its bearings, and knowing the whole circumstances, will not think that there has been any thing done on this side of the bar for which the Crown counsel have any reason to be ashamed. I know it is my own feeling, that I have endeavoured to act in as liberal and fair a manner as has been consistent with my public duty.

Gentlemen, with respect to the charge of murder, it is impossible for me not to state, in the broadest and most decided terms, that that charge, according to every view of the law, has this day been proved most distinctly. It has been proved to you by the testimony of the Noble Earl who was first examined, and of Mr Douglas, who followed him, that a duel did take place on the day libelled between Sir Alex-

ander Boswell and the prisoner at the bar ; that the friends of these individuals having had interviews and communications together, Mr Stuart came to the resolution that, unless satisfaction of a certain kind was offered, Sir Alexander Boswell should be called out ; that this was followed by certain other proceedings, which were detailed fully in the evidence ; and that the matter ended in a meeting, deliberately concerted at Auchtertool, where the unfortunate prisoner now at the bar discharged a loaded pistol at Sir Alexander Boswell, of which it is proved that he died. I will not go into the details of the evidence on these points. These are facts which cannot and will not be denied.

Gentlemen, if this be so, I say, that my duty calls on me to ask you whether any defence of a valid kind has been set up. The defence which was made approaches to the nature of justification, founded upon self-defence ; at least this is the technical term in our law under which that defence, if valid to any extent, must be classed ; for we know of no other actual justification of an individual committing murder, but the proof that he did so in his own defence. Now, I will not read any law books to you on the subject, but state, without fear of contradiction from my learned friend who is to follow me, that such a plea cannot legally and strictly avail the panel, under the circumstances which have been proved ; and that a person going out deliberately to fight a duel, and killing his antagonist, cannot be allowed to state himself as in those circumstances of self-defence, which entitle him to a verdict of acquittal.

I must own, however, that juries have, and by possibility you may think yourselves entitled not to regard the law in that strict point of view ; or at least that you may consider yourselves at liberty to go into the detail of circumstances which led to this unfortunate duel ; and, holding yourselves not so much a court of law as a court of honour, determine whether, under all the circumstances, the individual at the bar is to be held as guilty or not. Now, I say that such considerations belong more fitly to a higher tribunal ; and your strict duty does not entitle you to go into this investigation. But if you shall think yourselves entitled to go into this discussion, then I do state to you, that I think I discharge my duty in the manner most becoming and fitting, when I say, that I have thought it my duty not merely to bring this prosecution, but to lay it before you, in all its circumstances, as fully as it was in my power. I have

heard with much satisfaction the statement which was made in defence, and all the evidence which has been brought forward in support of it. These are now before you, and you will judge of them without my entering into the circumstances with which they are connected ; for I do think it would be a waste of your time, and not fitting in the situation in which I stand, to do this.

I leave the case with you, under the directions which you will receive from the Bench, to aid you in forming your opinion of the evidence produced ; and whatever you shall deem it fitting to do on this solemn occasion, the Public Prosecutor will be satisfied ; and I am sure your verdict will be satisfactory to the country and to your own consciences. That being my conviction, I consider it my most fit and proper course to leave the case entirely in your own hands.

MR JEFFREY.—*Gentlemen of the Jury*,—Though I must confess that the anxiety with which I entered this Court to-day has been very greatly diminished during the progress of the discussions which have now closed, and that it has not been at all increased by the very moderate and reasonable statement, which was such as I confess I expected, and am aware was due, from the Learned Prosecutor, I cannot consent, for the sake of my client, to follow his example, by committing this case at once, and altogether without observation, to your decision: Nor can I entirely discharge from my own mind those feelings of anxiety which the very brief, but pregnant allusion contained in the address you have just heard to the known and solemn authorities of the law, has certainly contributed in some degree to revive.

Before proceeding, however, to trouble you with any observations of my own, I may be allowed to relieve and gratify myself by stating, that there was *one* of those which fell from the Learned Prosecutor, in which I can, with the most perfect cordiality, concur—and that is, that whatever may be, or whatever he thinks ought to be, the issue of this trial, his having brought the case publicly and fully before you and the country is, and ever must be, a source of congratulation to the accused. He desires, certainly, justification at your hands, and he expects it. But, above all, he desires that full disclosure of the truth, for which, if it answered no other end, this public trial by jury ought to be for ever immortal.

Gentlemen, after the character that has been given of the person at the bar, and the evidence that has been laid before you this day, all perfectly harmonious and consistent throughout, as to his general conduct and demeanour, I think I may



say, there are no *specialties* in this case that can justify any alarm on the part of his friends; and that the only point to which those who are entrusted with his defence need now address themselves, is that judicial sanction under which he has been said to lie, and out of the danger of which I think it will not be difficult to induce you to deliver him.

The indictment sets forth, and observe, Gentlemen, your verdict must find that it truly or erroneously sets forth, that the prisoner at the bar *having conceived malice against the late Sir Alexander Boswell*, did, in the furtherance, and for the gratification of that malice, seek out pretexts or occasions to challenge him to fight a duel, and that, on the day mentioned in the indictment, he did *wickedly and maliciously* discharge at him a loaded pistol, for the purpose and with the desire of taking his life, by which pistol his life was undoubtedly sacrificed.

This is the charge.

To this charge he has pleaded Not Guilty; and, at the same time, he, in the beginning of the trial, all but admitted, and now by my means admits, that it is proved that he was the unhappy instrument of the death of that unfortunate individual. His plea of Not Guilty, therefore, which he now repeats, and trusts in with greatly more confidence before the facts were disclosed, of course turns and hinges on this allegation, that though, unluckily, his hand was the instrument of Sir Alexander Boswell's death, he did not kill him *wickedly and maliciously*; that his mind was pure from every spark of malignity, vindictiveness, or rancour; that he acted in this matter from motives totally unconnected with personal animosity; and that he ought now to be considered, not as having committed a great crime, but as having fallen under a great calamity.

I apprehend I need not tell you, what is familiar to all of us who live in the atmosphere of this place, that the essence of all crimes, their criminal quality, consists in the motive and intention from which they proceed, and that there is no act, not even that of bereaving a fellow-creature intentionally of life, that has in it any criminal character arising from its merely physical description, of being injurious or painful to another. The guilt, and the whole guilt, of any act, so far as it can be described by its external characters, consists in the criminal and culpable motives and intentions from which it proceeds.

It is only, therefore, rational and accountable creatures, who are presumed to be guided in all their important acts by reflection and choice, that can be called upon to answer for their conduct; and they answer, not for the acts themselves, but for

the innocence of the motives or objects which they had in view in performing them.

Now, Gentlemen, after all you have heard, while these propositions neither are nor can be disputed, if it were enough to support the plea in which we insist, that you are satisfied that the unfortunate gentleman at the bar stands in the predicament I have described—that you are all of you convinced that he went to the place of fatal rencounter without one atom of malice, hatred, or vengeance in his heart, and that he was actuated throughout, by motives not only not savouring of such feelings, but in their true character most directly opposed to them,—if this were all I had to do, I should then indeed be inclined to follow the example that has been set, and to leave you to the unassisted consideration of the evidence, which has all had but one character, and all but one tendency

But, before I can refer it to this evidence, it seems I must satisfy you that I have a right to desire you to consider it. Before I enter on my defence, I must persuade you that defence is admissible.

We have been told, and certainly without any reference to authorities—which, however, I do not pretend do not exist—in general and comprehensive terms, that duelling, in any case, is an irrational, and barbarous, and pernicious practice; and that he who, for any cause, is unfortunate enough to take the life of another in a duel, is necessarily guilty of the aggravated charge of Murder.

I am not here to pass encomiums, or to enter an apology for the practice in question; and yet I may be permitted to remind you, that on the occasions, almost the only ones, when we are called to consider the defences and views of parties who have engaged in such a practice, we are not generally in a situation to consider it very fairly. It is only when a lamentable accident has occurred, when precious and regretted blood has been shed, and when all our better feelings of sympathy and instinctive disapprobation of the actual violence that has occasioned the calamity are roused, that we are called upon to consider the nature of this extraordinary institution or practice of modern times. The actual evils of duelling are foremost and uppermost in our thoughts; but the evils which it tends to *prevent* entirely escape our consideration. It ought, therefore, in fairness to be remembered, that however awkward, however imperfect, however unequal and immoral a remedy it may appear, yet that, in point of historical fact, it has come as a corrective to greater immoralities, and a preventive of greater crimes. It is well known to all who

are versed in history that, in point of fact, the practice of honourable duelling superseded the guilt and atrocity of private assassination ; and that to this practice, pregnant as it often is with calamity and suffering in every form, we are not only indebted for the polish and refinement that belong to the members of our upper society, but for,—what is a great deal more valuable,—not only the high and general esteem in which courage and intrepidity are held,—but also for the universal diffusion of fairness, manliness, forbearance, and handsome conduct among all the Gentlemen of the land. The practice may indeed lead to the same results, in one point of view, I mean in relation to bodily suffering, to which the unlimited licence which it has prevented and superseded sometimes led ; but the dispositions of mind which it creates, for the most part, and according to all modern experience, are totally the reverse. Even those who are most prone thus to expose their own lives and those of others, are but rarely chargeable with any cruelty, ferocity, or quarrelsome disposition ; and the truth undoubtedly is, that the practice itself has encouraged the growth of humanity, forbearance, generosity of sentiment, and the greatest caution and mildness of demeanour.

That it affords a remedy for these crimes, and operates as a preventive to these atrocities, the history of those nations, where it prevails most and least, presents an obvious and conclusive testimony. In Spain, Portugal, and Italy, assassinations are daily occurring, poisonings, stabbings, the basest and most cruel murders. In those other countries again, where duelling is an occasional but rare occurrence, and where it is called in only as an appropriate remedy for those affronts, vexations, and griefs, for which the law gives no redress, such atrocities are unheard of. In submitting it as matter of consideration for you as a general topic, whether a severe punishment of the survivor in duels, and the suppression of the practice, would not lead to worse consequences, I trust, that in this country it would not lead to assassinations, but it certainly would lead to private and secret meetings held without witnesses, and without the means afforded to the parties of guarding against unfairness, or, what is as distressing and painful, the suspicion of it where it did not exist.

But I am not disposed to enlarge on this topic, or to urge it upon you as a necessary ground of my defence. All I say, or wish you to remember, is *a fact* which I believe no person will be bold enough to contradict, and that is, that however irrational,—however immoral,—how-



ever objectionable, in many points of view, the practice of duelling may be in itself, it is a practice so established, and the necessity of which is so enforced by sanctions which no man can be expected to resist or defy, as to render, in certain circumstances, such an encounter inevitable to any gentleman. The unfortunate individual, who, in obedience to that sanction, exposes his own life, and the life of another, is not answerable, I submit to you, for the justness or reasonableness of the institution itself. I have brought with me to-day a number of books, in which authors of the severest and strictest morality, and of the deepest sense of religion, have given the high sanction of their authority to the lawfulness of such an act, some of them tracing it from its origin to its consequences, and others in a more general strain, justifying it on argument and reason, and with authority far greater than the suggestions I have thrown out at all indicate.

I shall not trouble you now with going into many, or hardly any of these statements; at the same time, that I may not appear to be speaking entirely from my own authority, I shall take the liberty of submitting a very few lines, to show how the practice has been viewed by authors of the highest names, and of the severest principles in our kingdom.

I refer you, first, to a work universally known, and which will carry down the name of the father of Sir Alexander Boswell to the latest period in the annals of English literature. I mean his memoirs of his illustrious friend, Dr Johnson, a man certainly of the sternest morality, and most profound sense of religion, and who joined to both those high and severe attributes, perhaps the most vigorous understanding that was ever brought to the consideration of any moral question. It happens that Mr Boswell himself concurred in the opinions which he reports as those of his illustrious friend,—and from what we have heard to-day, it appears that his son inherited these opinions. I shall not trouble you with many words, but with one passage where this topic is started, and Boswell records Dr Johnson's opinion. “I started the question, whether duelling was consistent with moral duty? The brave old general (General Oglethorpe) fired at this, and said, with a lofty air, ‘Undoubtedly, a man has a right to defend his honour.’ (*Goldsmith, turning to me,*) ‘I ask you, Sir, what would you do if you were affronted?’ I answered, ‘I should think it necessary to fight.’ ‘Why then, (replied Goldsmith,) that solves the question.’ *Johnson.* ‘No, Sir, it does not solve

the question. It does not follow, that what a man would do, is therefore right." \*

The sage begins, you see, with disputing the opinion of the defender of duelling; and, therefore, if he had begun this controversy with that love of contradiction which often influenced him, he probably would have gone on to show that he was wrong; but, continues Boswell, "I said I wished to have it settled, whether duelling was contrary to the laws of Christianity. Johnson immediately entered on the subject, and treated it in a masterly manner, and so far as I have been able to recollect, his thoughts were these:—Sir, As men become in a high degree refined, various causes of offence arise, which are considered to be of such importance, that life must be staked to atone for them, though in reality they are not so. A body that has received a very fine polish may be easily hurt. Before men arrive at this artificial refinement, if one tells his neighbour he lies, his neighbour tells him he lies; if one gives his neighbour a blow, his neighbour gives him a blow; but in a state of highly polished society, an affront is held to be a serious injury. It must therefore be resented, or rather a duel must be fought upon it, as men have agreed to banish from their society one who puts up with an affront without fighting a duel. Now, Sir, it is never unlawful to fight in self-defence. He, then, who fights a duel, does not fight from passion against his antagonist, but out of self-defence, to avert the stigma of the world, and to prevent himself from being driven from society. I could wish there was not that superfluity of refinement; *but while such notions prevail, no doubt a man may lawfully fight a duel.*

"Let it be remembered, that this justification is applicable only to a person who receives an affront. All mankind must condemn the aggressor."

The topic was afterwards resumed, and then he says, p. 232, "He (Dr Johnson) this day again defended duelling, and put his argument upon what I have ever thought the most solid basis, that if public war be allowed to be consistent with morality, private war must be equally so. Indeed, we may observe what strained arguments are used to reconcile war with the Christian religion, but, in my opinion, it is exceeding clear, that duelling having better reasons for its barbarous violence, is more justifiable than war, in which thousands go forth without any cause of personal quarrel, and massacre each other."

\* *Boswell's Life of Johnson*, 5th Edit, 1807, Vol. II. p. 182.

On another occasion, on which both he and his auditor must have been prepossessed against the practice, the same doctrine is uniformly and consistently maintained. Boswell says, (Id. Vol. IV. p. 223,) " Having next day gone to Mr Burke's seat in the country, from whence I was recalled by an express, that a near relation of mine had killed his antagonist in a duel, and was himself dangerously wounded, I saw little of Dr Johnson till Monday, (April 28,) when I spent a considerable part of the day with him, and introduced the subject, which then chiefly occupied my mind. *Johnson*. ' I do not see, Sir, that fighting is forbidden in Scripture ; I see revenge forbidden, but not self-defence.' *Boswell*. ' The Quakers say it is, Unto him that smiteth thee on one cheek, offer him also the other.' *Johnson*. ' But stay, Sir, the text is meant only to have the effect of moderating passion ; it is plain that we are not to take it in a literal sense. We see this from the context, where there are other recommendations, which I warrant you the Quaker will not take literally, as, for instance, From him that would borrow of thee, turn thou not away. Let a man whose credit is bad come to a Quaker, and say, ' Well, Sir, lend me a hundred pounds,' he'll find him as unwilling as any other man. No, Sir, a man *may shed the blood of a man who invades his character*, as he may shoot him who attempts to break into his house."

There is another author of equal eminence, and equal purity of moral doctrine, to whom also I think it right transiently to refer ; and I do it the rather, because this learned person not only held, for a very long course of years, the situation of Professor of Morals in this University, but was himself of the clerical profession originally, and not only, therefore, by his habits and virtues, but by the training of his early life, must have had fully in view those sanctions of high principle, which religion has superadded to ordinary moral obligation. I need hardly say, that I mean the late Dr Adam Ferguson, whose writings are well known, and who, in the principles of morality, which he gave to the world as a summary of those views, by which he trained the youth of this land to generous and gentle lives, has treated this subject with the freedom and caution with which it ought to be treated, and has come to the same result with his brother moralist in the adjoining country. (*Ferguson's Lectures on Moral and Political Science*, Vol. II. p. 280, *et seq.*) He says what undoubtedly is true, " That a woman who is forcibly attacked in her chastity, or a man who is put to the trial of personal estimation, or honour, may receive an injury, which



the utmost power of the magistrate *cannot afterwards repair*. An *exception* is accordingly admitted in favour of the private right of defence on such occasions.

“ Among these modes of attack, there is a singular species of injury, owing its effect to the caprice of manners in modern times ; but of which the effect is extremely severe and injurious, not susceptible of any legal measurement, nor reparable by all the power of the magistrate.

“ In consequence of this singular caprice, altogether unknown to the celebrated nations of antiquity, not only aspersions of character, but any single term of reproach, or gesture of insult, so far impairs the estimation or credit of the person who suffers them, that if the breach be not repaired, in the way which caprice also directs, he becomes an outcast from the society, in which his condition depends on the esteem in which he is held. Applications to the courts of justice, for reparation, *would only increase the dishonour*. False aspersions may be removed by the clearest evidence of truth ; but this would not remove the dishonour of having suffered them to be made. An accusation may be known to be true or false ; its effect, however, in this case, does not depend upon the degree in which it is believed, but upon the degree of tameness with which it is received. Even calumny hurts, not by the imputation of any criminal charge, but rather by the imputation of cowardice, implied in the manner of receiving it ; and the defence which caprice has provided for this mode of attack, is a display of courage, not a refutation of any false accusation. The accusation may be true,—but the courageous vindicates his honour. The accusation may be false,—but the coward is overwhelmed with disgrace. Even the injured is denied the use of stratagem or surprise in his own defence. He *must* meet his antagonist, however injurious, upon equal terms ; and, if he would preserve his honour, must pass through the hazard of a single combat for that purpose. His character for integrity may be blasted or entire, but his estimation, in point of honour, is independent of either condition.

“ In this example, the deviation from reason is monstrous,—but the dignity of justice is made to stoop to the caprice of fashion ; and so long as the private injury is suffered to have its effect, the petulance or folly of one person may drive another from his place in society ; so long as the magistrate cannot preserve the citizen in his state, *so long the injured citizen must be allowed to defend himself, and to adopt the only means which are effectual for that purpose*.

“To reform this abuse has been justly considered as an object of great importance in the policy of modern nations. But attempts to this purpose have begun, perhaps, *at the wrong end*, by denunciations of severity against those who, finding their honour invaded, take the ordinary way of preventing or repairing the wrong with which they are attacked. If men are, by vulgar caprice, made accessible to an injury of the most serious nature—to an injury which a magistrate cannot repair, it is *by no means just* to restrain them from the only means of defence that is left in their power. This being evident to the general sense of mankind, the only effect of severities denounced by the law, in most countries, against the injured, as well as the aggressor, has been to oblige courts of justice to fall upon measures to evade the rigour of that very law they are required to apply.”

It is hardly necessary for me to pursue this quotation farther.

I have read you the opinion of a Philosopher and a Clergyman. I will now read you the opinion of a Philosopher, a Lawyer, and a Judge, one most eminent too in all these characters, and who, for a long period, occupied the seat of justice in this country, and in the very Court in which we now are assembled, and will continue to adorn and improve its jurisprudence as long as the Courts or Law of Scotland shall remain established. I mean Lord Kames, who, in one of his most discursive and elaborate works, has given, by far, the most decided opinion of any to which I have yet alluded. I quote from the *Sketches of the History of Man*, (*Kames' Sketches*, Vol. I. p. 335.) “Is duelling a crime by the law of nature? A distinction is necessary.—If two men, bent to destroy each of them the other, meet armed, and one or both be slain, the act is highly criminal: It is murder in the strictest sense of the word.—If they appoint time and place to execute their murderous purpose, such agreement will not be more innocent than an agreement among a band of robbers to attack every passenger; they will be abhorred as unfit for civil society. But a duel, which an affront forces a man upon, for vindicating his honour, when no satisfaction is offered, or no proper satisfaction, *is very different*. *I cannot see that the person affronted is guilty of any crime*; and if the person who gave the affront have offered what he thinks full satisfaction, *I see no crime on either side*. The parties have agreed to decide their quarrel in the honourable way, and no other person is hurt. If it be urged that duelling is a crime against

the state, which is interested in the lives of its subjects, I answer, that individuals are entitled to be protected by the state ; but that if two men, craving that protection, agree to end the dispute by single combat, the state has no concern. There is nothing inconsistent with the laws of society, that men, in an affair of honour, should reserve the privilege of a duel ; and, for that reason, the privilege may justly be understood as reserved by every man when he enters into society. I admit that the using the privilege on every slight occasion cannot be too much discouraged ; but such discouragement, if duelling be not criminal, belongs to a court of police, not to a court of law.—What then shall be said of our statutes ?” —Observe, he speaks of our *statute law alone* ; and considers that there is no crime, unless by means of it.—“ What then shall be said of our statutes which punish with death and confiscation of moveables, those who fight a single combat without the King’s licence ; and which punish even the giving or accepting a challenge with banishment, and confiscation of moveables ? When a man thinks his honour at stake, fear of death will not deter him from seeking redress ; nor is an alternative left him, as the bearing a gross affront is highly dishonourable in the opinion of all the world. Have we not instances without number, of men adhering to the supposed orthodoxy of their religious tenets, unawed by flames and gibbets ? How absurd then is it in our legislature to punish a man for doing what is indispensable, if he wish to avoid contempt ? Laws that contradict honest principles, or even honest prejudices, never are effectual : *nature revolts against them*. And it is believed, that these statutes have never been effectual in any one instance, unless, perhaps to furnish an excuse for declining a single combat.”

With these authorities, and with the inward authority of the sense and obvious reason which they convey, I think I may be allowed to say, that I was startled at the very broad proposition on which the learned prosecutor rests his claim for a verdict of Guilty, and of Murder too, on the present occasion. He does all but admit indeed, that if there be *any* case in which killing in a duel is not murder, and not even criminal, it is the case now before you ; and his proposition amounts, therefore, to this, that, in point of fact, a man who, in any given or imaginable situation, shall have the misfortune to kill his antagonist in a duel, shall be adjudged guilty of the crime of murder. I must hold him as stating this of the most favourable case that can be suggested, for I will not do the present case the injustice of supposing that any



can be imagined stronger—or so strong. But take any case—suppose an officer of high rank, at the head of his regiment, beaten, kicked, spit on, reviled, and trampled on, by a man of his own condition, and of greater bodily strength, all demands of apology or satisfactory explanation rejected with contumely, reduced, therefore, to the alternative of choosing between being expelled from his profession, hooted and pointed at in society, or giving a meeting to his enemy: But if he does give a meeting, and deploring the necessity, while discharging from his mind all bitter and malignant feeling, but bound to preserve his life, and that which renders life precious—he calls this person to the field, and there has the misfortune to kill him—that man, we are told, is to be suspended on a gibbet as a murderer! Why were such a doctrine precisely enacted by the Legislature,—did those statutes still subsist on which alone the Learned Judge, whom I have quoted, fastens the reproach of teaching such a doctrine?—even then I would call upon you to disregard them—I would say to you with truth, that they had been abrogated by a contrary usage, and by that change of times and manners, which we know, in this country, can effectually wipe away all penal enactments, whether formally repealed or not.

I do not wish, nor do I think it necessary in this case to go into details or arguments of a debateable description; but I cannot help, in passing, venturing to say to you, in broad and general terms, that I conceive the criminal law of this happy country to consist, not in the barbarous and implacable severity of its antiquated statutes, nor in the severe and impracticable doctrines that may still retain their places in our books of law, even of the greatest authority; nor even, I say it with great submission, in the *dicta* that may fall from the lips of those high and stern magistrates, the Judges of the land, who are bound to assert all the severity of the code which they are appointed to uphold, and in their places to countenance or sanction no relaxation, however hard and inoperative in the correction of crimes these may be; but, I say, the criminal law of this happy country consists in the authorized and approved *practice* of its courts of criminal law,—and is ultimately embodied in the popular, admired, and consistent verdicts of juries. I am far from saying that juries have any dispensing power over the law; I am far from saying, though that has been said, that they have a rightful power to disappoint the law, where its sanctions have been plainly incurred. But, I say, that where the verdicts of juries have met, for a course of

time, with the general approbation of the community, and the sanction of the Courts under whose authority they are pronounced,—when they go on in an uniform series, and all point one way, they then make and constitute that real and practical law on which all the subjects of the land are entitled to rely, and on the administration of which the people, with the greatest security, may depend. And, in truth, it is a proud and fortunate circumstance for this country, that such an institution as a jury should exist, with power occasionally to temper the severity of that law, which a court of another description would too inflexibly enforce; and thus silently to abrogate statutes, or maxims of common law, that the course of the times, the progress of manners, the disappearance of some crimes, and the rise of others, may have rendered inapplicable and unnecessary; that such indications of the temper of the people, that such manifestations of the feelings and views of those who are selected from among the people to represent it, and decide on the fate of their brethren, should be allowed, by means of refusal, to guide the Legislature to the repeal of particular laws, or the enactment of new ones with mitigated penalties.

And, Gentlemen, I perceive that, in a neighbouring country, where the criminal law is almost entirely statutory, and the authority and construction of it, therefore, greatly more precise than with us, where the whole code is more of the nature of common law, this power of juries is not only recognized as existing, and winked at by Judges, but is subscribed to by them, and applauded not only by the country at large, among whom these juries have never been known to have lost their credit, but even by the Judges themselves, from whose *dicta* they occasionally dissent.

Why, Gentlemen, there is one familiar instance of this, which has lately and frequently been brought under the view of the Courts, and of Parliament,—I mean the difficulty, or rather the impossibility, of finding juries to execute laws which have become too severe for the age. I mean particularly that common topic of complaint, the unreasonable severity of making stealing to a very small amount a capital offence; while small occasional lowering of the value of the articles stolen would reduce the crime to what is called a clergyable or venial felony. In these cases, it has been often noticed and complained of, that juries, in the face of the most undoubted evidence, are constantly in the practice, when obliged to convict, of bringing in the article as not worth the tenth part of its real value. The late Sir Samuel Ro-

milly, in his well known discourse on the criminal law, gives a vast variety of such cases where things were proved to have been sold by the thief, for ten, twelve, and sixteen guineas, and a Jury has found them to be worth only 39s. ; and there is one instance where in a theft of a ten pound note, the Jury found the prisoner guilty of stealing to the amount of 39s. only ; and one Jury is mentioned, before whom two men who were found guilty conjunctly of the same theft, were yet convicted variously, one being found guilty of stealing to the amount of 39s. and the other of 50s. which astonished the Judge, till, on inquiry, he found that the man found guilty of stealing to the amount of 50s. had formerly been before a number of that jury at a Quarter-sessions for other offences, and was, therefore, thought deserving the higher penalty of the law, while the other was for the first time before them, and was, therefore, convicted for the lower.

But these practices, irregular as they are, have received an extraordinary sanction, in the way they are spoken of, by the great and most popular writer on the law of England—I mean Blackstone. He says, “ It is true, that the mercy of juries will often make them strain a point, and bring in larceny to be under the value of twelvepence, when it is really of much greater value ; but this, though evidently justifiable and proper, when it only reduces the present nominal value of money to the ancient standard, is otherwise a kind of *pious* perjury, and does not at all excuse our common law in this respect from the imputation of severity, but rather strongly confesses the charge.” (*Blackstone's Com.* Vol. IV. p. 239.)

Now, this is the language of a Judge and a master of the law, of one of its greatest oracles and brightest ornaments ; and he tells you, that this practice is a *pious* perjury ! recognizing it as quite familiar, done daily with the acquiescence of courts, and neither entailing reproach on juries among their neighbours, nor exposing them to the censure of their legal superiors.

He calls it a *pious* perjury ! as we say a *pious* fraud, meaning something commendable on the whole, though not in all its bearings, conformable to strict precept.

I might quote instances of this kind in our own practice. We had once a statute, Gentlemen, now abrogated, by which juries were tied down in distinct terms to convict a person of murder, whether they thought him guilty or not, provided certain presumptions of guilt, which the Legislature had chosen, when found together, to take as absolute



proof, should be found to concur. I mean the statute of William and Mary regarding child-murder, declaring that if it should be proved, that a woman had not revealed her pregnancy, or called in help at the birth, and the child was afterwards missing, these circumstances concurring, should, in all cases, be taken as proof of child-murder.

Many convictions were got under this statute; but as a number of cases arose, where, from false modesty, accident, or otherwise, all these supposed infallible criteria concurred, without the guilt of murder having existed, Juries came to boggle at such an enactment, and, accordingly, it was abrogated by their uniform refusal to execute it. All our late writers distinctly say, that of late years no convictions could be obtained under that statute. Nay, I remember myself, in the early part of my practice, of two cases where the statute was libelled on, in one of which the jury stated, that they would not convict on the statute, and found the prisoner not guilty, and the judge approved of their verdict. And in another case, I remember a Depute-Advocate was reprov'd for bringing such a case to trial, and the judge told him plainly, that if he did proceed on that statute, he would take care there should be an acquittal.

Accordingly, that statute, by an act of laudable and praiseworthy contumacy on the part of juries, was abrogated in actual practice, before it was repealed by a recent act of the Legislature, which declared these circumstances to infer a simple felony, punishable with imprisonment.

But though I refer to these cases to let you understand what I apprehend the law, and the practice of that law, actually to be, I am far from saying that they afford a precedent which is in every case, or lightly to be followed; for though a jury has been commended *for* finding a thing which is worth many pounds, of the value only of 39s., nay, for even finding, as in the case of the accession to the same crime, that it was, and that it was not of a certain value, I cannot but acknowledge, that the frequent assumption of this extraordinary and perilous power, by which, if exerted, except in extraordinary cases, the stability of the law would be gone, is by no means to be approved. But I do say, that even this is within the constitutional power of juries, when connived at, or openly recognised by high judicial authority; and I state this case of extraordinary power in order to show you that what I now contend for falls far within its limits. I do not require you to find that Sir Alexander Boswell did not fall by the hands of the prisoner at the bar, but

only that he did not fall by his malice.—I call upon you to give in a verdict of no untruth, directly or by implication. I call upon you, and I think I cannot call in vain, that you will not allow your verdict to be any thing but truth; and I tell you, that you cannot be compelled to say that the prisoner *wickedly and maliciously* slew that unfortunate gentleman; if you sincerely think he did not,—if you are satisfied that he slew him without malice, anger, or hatred, in the encounter;—in short, that the very reverse of all these feelings burned in his bosom towards the unfortunate gentleman at his death, before his death, and after his death.

The true point, then, is, Whether there is evidence that he killed him maliciously? I need not read authorities to you upon this subject. Without multiplying these, I have marked a passage in Mr Hume's work, in which he describes that which forms the essence of all crimes, and to which alone the evidence in all prosecutions must go. He begins (chapter 1st) with the explanation of the nature 'of that *dole*, as it is called,—that corrupt and evil intention which is essential (so the light of nature teaches, and so all authorities have said) to the guilt of any crime. Now, in delivering this precept, those authorities are not to be understood in this sense, as if it were always necessary for the prosecutor to bring evidence of an intention to do the very thing that has been done, and to do it out of enmity to the individual who has been injured. In this more favourable sense to the prisoner, the maxim cannot be received into the law, for it would screen many great offenders from the punishment of their transgressions. And I think it is only true in this looser and more general, but a practical and a reasonable sense, in which an English author of the first judgment in those matters (Judge Forster) has explained it; that *the act must be attended with such circumstances as indicate a corrupt and malignant disposition; a heart contemptuous of order, and regardless of social duty.*"

This, Gentlemen, is what you must find proved before you can find any one guilty of a crime. That which renders any action a crime is, that it proceeded from an illaudable, improper, criminal, malignant design.

Now, with great submission, I take this, in every case, to be *a part of the evidence*, and as such, competent and proper for the determination of a jury,—assisted, no doubt, by the opinions of the learned persons who preside in the Court, but only taking these as opinions to aid them in forming their own; so that, on a view of all the evidence,

the jury is to say whether they are convinced that the prisoner is guilty or not guilty of that malignant purpose or contemptuous disregard of law and order, which forms the undoubted essence of every crime.

It is no doubt true, that, in our law books, it is laid down, that killing in a duel, however fairly that duel may have been conducted, is and ought to be considered as murder, and there are two reasons to explain how this, I must say; too unqualified proposition, has been allowed to stand in our books of authority. In the first place, it is derived from a period of society, when our statutory law did make such a declaration; and one of the causes of its severity was, that the manners and customs of the times were such as to justify the enactment. For it is well known to every one, that there was a period when the abuse of duelling became a monstrous and flagrant evil, and when, out of mere wantonness, vanity, and folly, the lives of the most valuable citizens were sacrificed in consequence of its prevalence, for causes equally fantastical and barbarous. I believe it is mentioned somewhere, that, in the short reign of Henry IV. of France, no fewer than 4000 gentlemen were slain in duels; and it is quite well known, that, during the sixteenth and seventeenth centuries, the same practice prevailed to an intolerable excess in these islands. That was the date of the law in question; and the history of the origin of these *dicta* of our lawyers is still preserved. How they have been preserved long after the lapse of the circumstances by which they at first were justified or required, is a question which probably will not require much explanation to those who know how tenacious lawyers and law-writers are of ancient maxims, and even of ancient prejudices;—how unwilling lawyers, of every degree, are to acknowledge the imperfection of that law, which it is a part of their duty to uphold and magnify; how willing to say, that recourse to a Court of law supersedes and renders unnecessary any other appeal; and, therefore, on that rash and false assumption, to build the conclusion, that any other appeal, if attended with danger, or terminating in death, must be criminal and murderous. Nor should it be forgotten, that it may with some reason be maintained, that the most severe sanctions of the law should still be held out for the terror of offenders,—that all such killing should be taken, in the first place, for murder; that the act should be held as *prima facie* illegal, and should have the effect of putting him who commits it to a



proof of the circumstances which make his case an exception from the ordinary rule.

I have stated this rather as an apology for the law, than a justification of it. For I will take leave to say, that it would be the greatest libel on the law, to hold that, in consequence, not of any statute declaring duelling a capital offence, for there is no longer any such statute, but, on the common law of the land, *all* killing in a duel shall be regarded as murder; in other words, that the crime of maliciously and treacherously killing another person shall be predicated of all those who kill in a duel, although there is no appearance of malice, or of any improper motive whatever. No opinions, no law, no rule of practice, no human authority, I say with confidence, can either compel or justify a jury in finding a man guilty of killing maliciously, who is proved not to have had any malice,—not to have had any bad motive, though his conduct has been sifted to the uttermost. It would be, of all preposterous notions, the most preposterous, and of all absurdities the most extreme, to say, that the law requires a jury to save themselves from perjury, by perjuring themselves to convict the innocent! You are bound, it is said, to find the prisoner guilty of maliciously killing. But I say that if you think he did *not* kill maliciously, you are plainly bound to acquit him; and that *you* would be guilty both of murder and perjury if you did otherwise.\* It

\* This argument might be put in a more technical, and perhaps a clearer, though less popular way, as follows. The essence of all crimes being the *dole*, or *malus animus*, from which they proceed, it is obvious that when we say that all killing in a duel is murder, we can mean only that the circumstances of deliberate appointment, and the intentional use of deadly weapons, are sufficient *indicia* from which to infer the existence of such *dole*, or malice. But the question, of what *inducia* shall be sufficient, in any case, to establish the existence of a criminal purpose, is plainly a *question of evidence*; and as such must, *ex necessitate*, be within the province of the jury. The Court may give it as their opinion, generally, that the concurrence of such *indicia* raises a presumption of malice,—but whether such malice is actually proved in any particular case, it must always be for the jury to determine: And to fix absolutely, and *ab ante*, that, upon proof of such *indicia*, the jury *must* necessarily find the malice proved, would just be doing, on this branch of the common law charge of murder, what the statute of William and Mary was held, very oppressively and unjustly to have done as to the charge of child-murder under that act. It is obvious, also, that to hold any such doctrine to be a fixed and binding part of the law, would be substantially to remove from the jury the cognisance, not only of the general guilt or innocence of the accused, but also of the most important part of the *evidence* by which that was to be determined. Consistently with that doctrine, indeed, a jury ought not in any such case to find the prisoner guilty, or not guilty; but should be limited to find merely that

is necessarily a matter of *evidence*, whether a prisoner has contracted the guilt of preconceived malice, and murder ensuing from it, or whether he has only incurred the involuntary and inevitable misfortune of taking away the life of another person, against whom he had no malice ; and that, in order to render his own life tolerable, and to protect that state in society which he held, and his family, character, and name, —which a man must always be entitled to protect, where, by the fault of another, they have been endangered, at the hazard and at the expence of that party's life.

Nor is this new law. The Prosecutor, indeed, has told you, that life is so precious, that it is not to be lightly invaded, that no notion of violated honour, that no gratification or soothing of wounded vanity, can justify the taking it away ; and he has gone so far as to tell you, that there is no ground on which deliberate killing can be justified, except

it was proved or not proved that he killed another in a duel,—for this is the only matter upon which, according to this system, they can possibly have any right to decide.

The doctrine of the prosecutor, indeed, leads obviously to the same undue limitation of the powers of the jury in cases of this kind, as was long maintained in cases of all kinds by the practice of pronouncing *special interlocutors of relevancy*. For if effect be given to the supposed maxim of law, that *all* killing in duels is necessarily murder, the result must obviously be the same as if, in every charge of murder in such circumstances, the Court had found specially, that the fact of the pannel having killed the defunct in a duel, *was, per se*, relevant to infer the guilt of murder, had repelled all the defences of the pannel that did not resolve into a denial of the killing in a duel, and remitted the libel, as found relevant, to the knowledge of an assize, with instructions to confine themselves in their verdict to the fact of such killing only. If such a deliverance would be contrary to the rights of the jury, and of the prisoner, which no one it is supposed will now dispute, it is difficult to see how the doctrine of the prosecutor can be saved from the same imputation. If the law be absolutely and clearly, as he says it is, it is plain that the enforcement of it would lead infallibly to the same results with the interlocutor that we have imagined. The only difference between the exploded practice and the present would be, that the law, which certainly *ought* to be enforced, if it ought to be recognized as law at all, *was* enforced by such interlocutors, and may be evaded and disappointed by our modern forms of proceeding. It is humbly conceived, however, that the maxim relied on by the prosecutor is not a part of the law by which a jury can be bound, but the result merely of the traditionary opinions of judges on the weight due to certain *indicia* of malice or criminal purpose, the true value and effect of which it is the right and the duty of the jury to determine in every particular case. To hold otherwise, would be to hold that it was equivalent to a *standing special interlocutor of relevancy* in every case of killing in a duel,—and that, in every such case, the jury were bound to act under the implied limitation of such an interlocutor as we have above imagined.

that of self-defence, by which he means, in defence of our life, sacrificing the life of another.

Gentlemen, this is not the law. A man may deliberately and intentionally kill in defence of his own life undoubtedly ; but he may also deliberately kill in defence of his property, where no personal violence is meditated—a woman may deliberately kill in defence of her chastity—a soldier may deliberately kill in defence of his post—a common sentry placed upon guard at the door of a field officer ;—nay farther, a common citizen may deliberately kill in order to prevent a suspected criminal from making his escape, or to prevent a rescue. The cases, indeed, are numerous, in which our law recognizes the deliberate sacrifice for life—for the preservation of certain rights ; but there are other cases, besides those of the character now mentioned, which seem to afford a direct legal warrant for putting life to hazard. This also may be done for the protection of the person from supposed or eventual danger ; nay, even of property from probable invasion or destruction. Now, will any man say that there can be reason in that law which recognizes my right to shoot at a person who is carrying away an empty box, or even a purse full of gold—take it any way you please—and yet holds that he may not lawfully kill for the preservation, not of a pitiful portion of useless wealth, but for the preservation of all that renders wealth, society, and existence itself tolerable ; and this too, where the person sacrificed can be shown to have been, in some degree, in the wrong ?

If a person comes to the door of a post-chaise, presents his pistol, and asks your money, you may lawfully shoot him—you may lawfully shoot him, if you act upon a reasonable belief of danger. Even if his pistol should turn out not to be loaded, and so it appears that he never intended to shoot you, still your shooting is lawful. If you see a person packing up your property, or breaking into your house, and carrying it away, you may lawfully shoot him. Why ?—just because you are entitled to say, I value more the security of my property, even when placed in unreal danger, than the life of the person who has put himself in opposition to my rights, such as they are. But, if a person has done that which has placed me in the dilemma of either shooting at him, or of living as an outcast from society—of being exposed to all manner of insults and contumelies—of being excluded from all honourable pursuits and professions—shrunk from by my ancient friends—the cause of blushing to



my relations, and sorrow to my children—the stain of an honourable name, and a hopeless outcast, and exile from society—without hope, means, or chance of restoration—if, I say, a man, by an act which is unlawful in itself, has placed me in that situation, can it be said, there being no malice in my heart, no means of defending my rights but this, no possibility of my subsisting on the earth without scorn, and all this by the unlawful act of another,—I ask you, if, under these circumstances, I do not take my enemy off by assassination, but merely expose his life to the same risk as my own, and that, perhaps, with many chances against me, and he fall,—is it possible that the law, which deals so leniently with other slaughters, should call that a murder? I submit to you, that this would be a proposition altogether monstrous. It is fortunately one which will now find neither patrons nor protection in any quarter.

I do not say that all duels, if fairly fought, must save the person slaying from the consequences of unlawful slaughter, or even of murder. On the contrary, I admit that, though duels fortunately are more rare than they were 100 years ago, and though I trust that a great proportion of them now proceed on justifiable grounds, it still is much to be feared, that, if an unlimited licence were given to them, and if the ordeal of a sifting trial did not await the survivor, there might be instances of abuses, such as formerly existed, and were repressed by severe statutes. I would by no means place my cause on this footing. I freely admit that there is a heavy presumption against that man by whom blood is shed. I admit that I would come slowly to the conclusion, that blood had been shed with innocence; and I ask no more than this, that I should be entitled to look to the causes of quarrel, and not be judged by dry maxims from books. I ask no more than that you would look to the practice of the times, to the recent proceedings of courts of law; and, in every case, inquire whether you find, from the nature of the act, as proved, any indications of that malignant spirit, and of those inexcusable passions, without which, I say, there can be no crime,—without which, where life is lost, there can undoubtedly be no murder.

Accordingly, Gentlemen, I find that the course of practice, ever since the real evil of duelling abated, has been exactly conformable to what I think you must feel already, not only justifies you, but lays you under the necessity of inquiring what is the vindication in the present instance of the party accused. I have already mentioned that, in a short

reign in France, 4000 gentlemen are said to have fallen in duelling. It is a happy and a delightful contrast, and vindicates and explains the change of our statutory law, and decisions, that is to be found in the more recent periods of our history, when I tell you that, in the longest reign almost on record, that of the late Sovereign of these kingdoms, there were only between 60 and 70 persons reckoned to have fallen in Great Britain,—I believe I may say in Great Britain and Ireland, in duels. I speak from a book perhaps of no great authority; but which, I believe, is pretty correct in that general statement; and by which it appears that, in all that time, nearly 60 years, about 170 duels were fought, *i. e.* 340 persons were engaged in such combats, and out of these between 60 and 70 were slain. Now, the first remark on this statement is, that there do not appear to have been more, in all, than between 18 and 20 trials on account of these affairs. In by far the greater number of cases, even though thus of a capital nature, the law did not think it necessary even to bring the survivor to trial, the event having been so plainly and notoriously justifiable and inevitable. Of these 18 or 20 trials, too, you will therefore understand that they include all the bad and doubtful cases, and such as are to be considered the worst; perhaps one or two very bad cases may be supposed to have escaped. Now, the first remarkable thing is, that, in all these instances, there were just two, I think, or at most three capital convictions, and these are cases which strengthen the argument, and give one a notion of the sort of practices against which the ancient severity of the law against duelling was probably directed.

One, and by far the most palliated, was that in which a countryman of ours, Major Campbell, was unfortunate enough to receive and undergo the sentence of death for a duel fought in Ireland. This is the most mitigated case that occurs in the register of convictions; but I am sorry to say, and I will do it with all tenderness for the memory of that gentleman, that it was a strong and bad case. The parties had a quarrel, but separated afterwards for several hours; they were proved to be cool and composed in the interval, especially Major Campbell; they met again, and though they were quartered at the time in a garrison, where there were mutual friends, who could easily have been collected, they met in the night-time, *without seconds*, and in a private room. The only evidence, therefore, against the survivor was, and could only be, the general account of the antecedent quar-

rel, and the words of the unfortunate gentleman who was slaughtered, previous to his decease; and on this last the conviction depended. It was clearly made out that the unfortunate gentleman who died maintained that the duel was not fair, and said of his antagonist, that he was a bad man, and knew that he had hurried him.

Another of the cases where murder was found, was a case of plain assassination. I forget the names, but the parties met in the field, and when the one was going up to the other, apparently to salute him, or for some such purpose, he raised his pistol and blew his brains out. That man was tried, and most deservedly convicted, executed, and dissected, as a barbarian and ruffian, undeserving of the privileges or name of a gentleman.

Of the other cases which were selected for prosecution, some few have issued in a conviction of manslaughter, and these are all uniformly of the worst description. The first on record is that of a former Lord Byron, and approaches somewhat, in its circumstances, to that of Campbell. The parties quarrelled, went out from a company of their friends into a room, *without seconds*, and, by the light of a candle, fought with swords, and one of them was mortally wounded—the survivor, admitting that he drew his sword, and made a lunge at the other, before he got his sword entirely out of the scabbard; this, therefore, was a very narrow case; and on a trial before the Lord High Steward, a manslaughter was found, the prisoner being discharged on one day's confinement.

The greater part of the other cases are not reported, except in newspapers. But there is one case so reported, to which I beg leave to refer you, because, though it only occurs in the newspaper, it is one very famous, as being the first of those occasions in which judges admitted from the bench the necessity and expediency of juries tempering the law where, by necessity, judges have held themselves bound by it. I allude to that of Mr William Poe Purefoy, for killing Colonel Roper in a duel; and I may mention in a word the nature of the case, that you may see how infinitely more unfavourable it was than the present. Purefoy was a lieutenant in the regiment of which Colonel Roper was the colonel. The young gentleman had been guilty of some excess when engaged with his friends on a festive occasion, which called forth a pretty severe reprimand from the commanding officer. This was resented by the former in such unmeasured terms, that Colonel Roper was under the necessity of bring-



ing him before a court-martial, who found the charge proved, and sentenced him to be dismissed from the army, and rendered incapable of serving. That sentence being confirmed by the proper authority, was read at the head of the regiment, in Lieutenant Purefoy's presence, and carried into full effect. After this he came up to the colonel, and told him that he was a coward, a ruffian, and a scoundrel. The colonel answered, he had nothing to say to him, and turned on his heel. The same day he met him again, and said, "Do you now agree to meet me?"—at the same time shook his whip over his head, saying, "There is an earnest of what you may expect," and posted him. After some consultation, Colonel Roper was advised, as Purefoy had ceased to be in the army, and had the rank of a gentleman, it was necessary to send a message to him. They accordingly met, and Purefoy shot Roper dead on the field.

This case came to be tried in the year 1794, before Baron Hotham, at Maidstone; and that learned person, after summing up the case, (this is always done by the judges in England,) spoke as follows:

"It is now a painful duty, which jointly belongs to us; it is mine to lay down the law, and yours to apply it to the facts before you. The oath by which I am bound obliges me to say that homicide, after a due interval left for consideration, amounts to murder. The laws of England, in their utmost lenity and allowance for human frailty, extend their compassion only to sudden and momentary frays; and then, if the blood has not had time to cool, or the reason to return, the result is termed manslaughter. Such is the law of the land, which undoubtedly the unfortunate gentleman at the bar has violated, though he has acted in conformity to the laws of honour. His whole demeanour in the duel, according to the witness whom you are most to believe, Colonel Stanwix, was that of perfect honour and perfect humanity.

"Such is the law, and such are the facts. If you cannot reconcile the latter to your consciences, you must return a verdict of guilty. But if the contrary, *though the acquittal may trench on the rigid rules of law, yet the verdict will be lovely in the sight both of God and Man.*"

The jury instantly acquitted the prisoner.

Then came a remarkable case, one of the few that have been reported at some length, that of Captain Macnamara, for killing Colonel Montgomery, in which, I know not on what grounds, the Grand Jury had found a bill for manslaughter.

That is a pretty strong case, though I do not mean to impute any thing unfair to the gentleman who survived, and I hope still lives. It was a case of a foolish quarrel about a dog with which the unfortunate gentleman, who was killed, happened to be attended when riding in the Park ; the dogs having quarrelled, Colonel Montgomery, who did not perceive that Captain Macnamara was near, came and separated the dogs, and said, " Whose dog is this ? I will knock him down." On which Captain Macnamara said, " Have you the arrogance to say you will knock my dog down ? you must first knock me down." An altercation took place ; Colonel Montgomery and his party rode up through Piccadilly, and Captain Macnamara following him, sent a friend immediately to Colonel Montgomery, met him the same day, and shot him dead on the spot.

I only wish to call your attention to the nature of the defence in this case, which, I believe, was prepared (indeed I know it was prepared) by the present Lord Erskine, who appeared as his counsel, but was not allowed to address the jury. The defence which he prepared was one which no British jury could resist. He states, " I am a captain of the British navy. My character you can only hear from others. But to maintain any character without situation, I must be respected. When called upon to lead others into honourable danger, I must not be supposed to be a man who sought safety, by submitting to what custom has taught others to consider as a disgrace. I am not presuming to urge any thing against the laws of God, or of this land. I know, that in the eye of religion and reason, obedience to the law, though against the feelings of the world, is the first duty, and ought to be the rule of action, but in putting a construction upon my motives, so as to ascertain the quality of my actions, you will make allowances for my situation. It is impossible to define, in terms, the proper feelings of a gentleman, but their existence have supported this happy country for many ages, and she might perish if they were lost." The jury instantly acquitted him.

Now, if this was a case of justifiable heat and violence, I do ask you what construction you would put on the present case ?

But there are two other cases to which I would call your attention. One from a very remote dependency of this empire, but which is known to have given several valuable men to the law. The case was from India—Bengal, I think. It was the case of Sheppard, \* which was tried before Sir Henry

\* Sheppard, Asiatic Register, Dec. 1808. Vol. X. p. 115, 116.

Russel, the Recorder of that Settlement. I must begin by stating, that this case issued in a verdict of manslaughter; though by the way, I would observe, that if there be any authority in law for a duel being a crime, it is either a murder or nothing at all. It is as much a departure from the authority of law to find manslaughter, as to find it no crime at all. This, however, was an aggravated case. A quarrel took place between two officers in garrison, who chose to go out after a good long delay, several weeks spent in the exchange of notes and so forth, in the dark, and to fight by the light of a lantern held by a black servant between them, without the inspection of a single European eye;—no witnesses were present, the offence of the party who suffered was of a very vague description, only one witness saying that he thinks he had heard Captain Phillips speak lightly of Sheppard on some occasion or other. On this provocation the challenge is given, the parties fight alone (for the black servant was not evidence) in the dark, and Captain Phillips is killed almost on the spot. I quote the judicial opinion on this occasion, rather to show the boldness with which the judge spoke out, (what all judges in their hearts must feel, and encourage juries to do,) than on account of its applicability to the present case. Sir Henry says, after stating that the crime of killing in a duel is murder: “At the same time, in compassion to human infirmity, courts of law and juries have been in the habit of making great allowances for the circumstances in which persons called upon to fight a duel may have been placed. When a fellow-creature is put to death from motives of deliberate malice, the law pronounces the crime to be murder. When the same act is committed with the immediate influence of violent passion, it is merely accounted manslaughter. Now, in the case before you, it will be for you to consider whether the present circumstances of society, as applied to a gentleman and a soldier, do not take away the particular character of malice from the crime. A man is placed in a situation, where, if he does not go out to fight a duel, he has no prospect before him in life, but that of contempt and ignominy. Surely, the feelings which are inseparable from such a situation, may be supposed to deprive a man of self-possession and self-command, as well as a violent gust of passion. And I see no reason why the law should deny, nor do I believe that the law does deny, the same indulgence to those feelings that it yields to a brutal impulse, which it is the chief object of all human and divine institutions to control. In declaring this opinion, I believe I go farther than most judges have done.



But I have not formed it without mature deliberation, and I think it places the question of law, in cases of duel, upon more stable and more tenable grounds, than the shifts and artifices which have been so generally resorted to." And he then alludes to the other circumstances which deprived the case of a malicious character. "Where it clearly appears in evidence, that two persons armed with weapons have gone out together, have fought, and that one of them has fallen, nothing more surely can be wanting to make out the facts of the case, and it is in vain to struggle against them, or to seek to prevent them."

The only other English case I shall trouble you with, is one which I also refer to,—not for the sake of that for which I might quote all the cases, the part taken by the jury—but for the judicial opinions, which you see I am collecting and going over, in order to show you that the Court not merely connived at but encouraged the lenity of juries, and, contrary to the law of England, allowed circumstances to be left to the jury, which had formerly been held matters of law, and among others, the inquiry whether the killing was malicious or not.

The case to which I refer attracted much attention at the time. It was the case of Alcock, which was tried before Baron Smith, in Ireland, in the year 1808, and I quote it, in order that the very strong judicial opinion given on that occasion may be before you, for, in other respects, it appears a case to be contrasted rather than compared with the present. It was a case of a duel between two candidates for an Irish county, where, as you may suppose, a pretty warm canvass was going on. Tenants of a certain rank have votes in Ireland. But, holding their lands by very precarious tenures, they vote in general with their landlord. One of these gentlemen had got the interest of a certain landlady, (for a lady was the proprietor,) and he therefore reckoned upon the tenants. The other candidate, however, was more popular, and the tenants were rash enough to tender him their votes. The offence of the unfortunate gentleman who fell was, that he allowed them to vote for him. The names of the parties were Colclough and Alcock. Alcock was the survivor—Colclough fell—Colclough had these votes tendered to him. Alcock, on finding this, came and remonstrated, in very warm terms, on the impropriety and indecorum of such a proceeding. Colclough protested in the most solemn terms that he had not solicited these votes. Alcock insisted that they should not vote for him. How can I prevent them? said Colclough. After some words, however, Alcock said he must have satis-

faction; a meeting was arranged, and they fought—certainly before a plentiful audience, for I believe most of the voters attended, so that there might be four or five hundred spectators. Mr Alcock put on spectacles before firing, which, it was proved, he did not at all times wear. This was remonstrated against by the second of the other party, who said that he could not see his father at that distance, (by the way, it would be no great misfortune not to see one's father in such a situation.) They then fought, and Alcock was shot dead the first shot. This case, which created a great and perhaps very reasonable sensation, came to be tried at the Wexford Assizes. The charge of the learned judge, after the evidence had been concluded, states as follows:

After observing that, in the earlier part of the circuit, there had been many capital trials which had excited no interest or attention, his Lordship proceeds:

“ How different is the case of the charge which we are now trying? Yet strip it of the trappings and aggravations, with which I know not whether party zeal, or a more justifiable motive, has sought to clothe it;—and what does it amount to? To a transgression with which we must, on the one hand, confess ourselves to be almost as familiar, as we must, on the other hand, admit it to be highly culpable and illegal. Two persons, disclaiming and violating the municipal law, prefer paying obedience to a false and mistaken code of honour; and one of these disclaimers falls in a premeditated duel, forbidden by the law of the land; but which the erroneous system of punctilio, to which I have adverted, enjoins in some instances, and permits in many more. No sooner has this melancholy catastrophe taken place, than the friends of the deceased commence a vigorous prosecution against the causer of his death. But some of these prosecutors we may presume, we even know, to have themselves been present, aiding and assisting, at the perpetration of what they now represent to have been murder;—and, in strictness of law, their representation is a just one. Some of those prosecutors we may conceive to have at one time been desirous that *their champion should inflict the death which he has suffered*; should *do* the very act for which they now prefer a capital indictment. If, abjuring the code of honour, and adhering to the rules of that which we are here assembled to administer, the prisoners or the deceased had *declined to send a message*, or been tardy in accepting one, we may doubt whether these strenuous assertors of the law would not have scorned to associate with such strict observers of it; and rewarded

their pacific conduct with indelible disgrace. Thus, on the object of their blame a hard alternative might be thrown—of being *posted as a coward*, or indicted for a *murder*.”

Then, after some remarks on the details of the case, he closes his address as follows :

“ However much and justly such combats are to be blamed, you may more abhor the sanguinary notions which produce them ; and pity the victims of a law of opinion, which you strongly wish to be repealed. You may have sons, you must have friends and relatives yourselves ; and will be disposed to ask this question of your consciences and hearts, Whether the pride and infirmity of human nature might not lead you to wish that these would rather violate the law, than endure the scorn and contumely of (Heaven knows !) an unsparing world ; or incur the slightest stain or blemish on their honour. You will wish to give the prisoner the benefit of these reflections ; but whether you would be warranted to do so, is *what I scarcely dare inquire*,—otherwise than by suggesting cases which I conceive to be similar in their legal nature for the purpose of illustrating and explaining your duties here.

“ If an officer, at the head of his regiment, be called a coward and a scoundrel, instead of cutting the offender down, challenge and kill him in a duel, he is a murderer by law ; and if you are *bound* to find the prisoner Alcock guilty, you will be equally *obliged* to return a verdict of conviction against a gallant officer, under the circumstances which I have described. Yet, on the other hand, the military punishment and intolerable disgrace, which must inevitably follow from his submitting to the affront, it cannot be necessary for me to dwell upon. If an aged, an infirm, a beloved and respected parent, be insulted and reviled, or even struck and beaten in the presence of a son, and this latter happen to kill the assailant in a duel, the transaction will be murder ; and if you *cannot* acquit the prisoner, you *could not* acquit the child. If a husband find his wife in the embraces of another, and kill him unarmed and unresisting, this is manslaughter of the lowest and most venal kind. But if, giving the adulterer further time for preparation, and a fairer chance for his life, he puts arms in his hands, and meets and kills him in a duel, the offence, altering its character, becomes at once murder ; and if you are bound to convict the prisoner here, you would be also bound to a conviction in the case which I have supposed. Not because in morals the criminality is equal ; but because both offences are murder in the eye of law. But let me ask of



your consciences and your hearts as men, could you convict the officer, the husband, or the son ?

“ *I will not repeat, lest I might seem to inculcate, the austere doctrine of the law.* In once stating it, I conceive that I have sufficiently discharged my painful duty. Nay, even sitting where I do, I think myself *warranted in doubting, whether this doctrine is not a sort of anomaly in our code* ; existing in theory, *almost abrogated in practice*, by the acuteness of the judges, the humanity of jurors, the mercy of the Crown. This, Gentlemen, was all I had to say. The evidence is before you. If you believe it, you have heard its legal results from the bench. You have the law of the land, bearing witness against the prisoner, on the one hand ; the law of opinion, on the other, endeavouring to excuse them ; the one prescribing rigour ; the other suggesting mercy. *It is for you to pronounce which call you will obey.* The trammels of my office forbid my adding more. But there is another, a far better voice than mine, to which, though I be silent, you may listen still. I mean that still small voice of which you read in Scripture, and which addresses itself to the consciences of good and pious men in the soft and soothing accents of clemency and peace. Its dictates may be followed with a confidence the most implicit. It is the voice of Him who cannot err ; who cannot lead his creatures into error ; who, to justice without blemish, can unite mercy without bounds ; who, all criminal as we are, can acquit us, and yet be just. To the influence of those secret and divine monitors, and (as far as human infirmity can follow) of this divine example, I surrender you ; and commit the care of the prisoner at the bar. I wait with some anxiety, and much impatience, for your verdict. Judge then whether I am impatient for a capital conviction.”

The jury in one moment acquitted him.

This is all I have to say to you on the precedents from the sister countries, where, you will recollect, charges of this kind are stronger, because the crime stands upon statute in England. The Scotch cases are very few. *There is no instance for 150 years* of any conviction for fighting a duel in Scotland—*none*, that is, since the time when those causes existed which rendered it necessary to pass the severe laws I formerly mentioned. The only three cases I am aware of are of a recent date. They are the cases of Lieutenant Rae in 1797 or 1798, Macdonell of Glengarry in 1798, and Dr Cahill in 1811 ; all these were cases of acquittal ; and all of them undoubtedly were cases far less favourable to the prisoner than the present.

Of the first case, no authentic record is preserved, but the

list of the jury is known, and I may be permitted to mention, that it consisted of men as honourable as yourselves, containing the names of many of the leading gentry of this place. Twelve of the jury were gentlemen of estate, and the remaining three were respectable citizens. That jury acquitted the prisoner, though it appeared that the sufferer had not been much to blame, and the survivor more.

The next case made more noise, and has been more correctly, at least more fully, reported. I am unwilling, as the respectable gentleman tried on that occasion still survives, to enter into the particulars of that case, farther than by saying, that it was admitted and proved, beyond the possibility of contradiction, that the unfortunate gentleman who fell had not been at all in the wrong, while the other was decidedly and egregiously to blame in the origin of the quarrel. Some little dissension occurred at a ball and supper in the North between Glengarry and Lieutenant M'Leod, and it was the opinion of all the witnesses that the latter gave no cause of offence. Glengarry, imagining, however, that he had, and, being of a passionate temper, indulged in the most unpardonable excesses. This young gentleman, wearing the uniform of an officer, and in the public ball-room, was accosted in the most violent terms by Glengarry, on account of some fancied insult, such as that he imagined M'Leod gave him an impertinent look. For this cause Glengarry struck this unfortunate young man with his cane, kicked him with his foot, and drove him in disgrace out of the room. A challenge ensued, and the parties met. Here, undoubtedly, by the advice of his respectable second, and with the help of his restored reason, Glengarry did confess the frightful excesses into which he had been hurried, and offered any apology—any atonement which was not inconsistent with the character of a gentleman. A condition was insisted upon, to which it was certainly hard, and perhaps impossible, for any gentleman to submit; the young man was advised to accept of no verbal atonement, unless Glengarry should put the whip with which the disgrace had been inflicted into his hand, and leave it to him to retort or not, as he might see cause. After much discussion, the terms were rejected—Glengarry went out—he did not fire wide of his mark or in the air, as Sir Alexander Boswell appears here to have intended, but fired into the bosom of the unfortunate young man, and his life fell a sacrifice in a short time after. A most respectable jury sat upon the trial. I shall read their names to you:

James Hamilton, Esq. of Bangour,  
 Sir Andrew Lauder Dick of Fountainhall,  
 Charles Brown of Coalston,  
 John Cadell of Cockenzie,  
 Francis Buchan Sydserrf of Ruchlaw,  
 William Wilkie, younger of Gilkerston,  
 James Johnston of Straiton,  
 James Watson of Woodbank,  
 Thomas Sharp of Houston,  
 William Hamilton of Westport,  
 Alexander Marjoribanks of Marjoribanks,  
 Mathew Sandilands of Couston,  
 Henry Guthrie, Writer in Edinburgh,  
 James Home, Writer to the Signet,  
 John Gloag, Merchant in Edinburgh.

That jury tried the case ; and after a long and elaborate defence, the facts coming out as I have stated them, they returned a verdict, all in one voice finding the prisoner *not guilty*. They accompanied this verdict with an explanation of the grounds of it, which has very properly been preserved, and is as follows :

“ The Chancellor of the Jury stated, That he was desired by them to explain to the Court, that the sole ground on which the verdict proceeded, was the anxious desire latterly manifested by the pannel and his friend Major Macdonell, amicably to settle the matter, and prevent proceeding to extremities, by making an apology, as the jury highly disapproved of the pannel’s conduct at the beginning of the unhappy dispute ; and it was fortunate for him that the duel did not take place so soon as intended, before any attempt was made to apologize, as, in that case, it was highly probable that they would have returned a very different verdict. At the same time, it was proper to observe, that the jury had no idea of finding, by their verdict, that what is called fairly killing a man in a duel, could afford, by itself, any defence against a charge of murder.” And of this verdict, with this explanation, the Court distinctly approved.

I forbear dwelling on this case. But I must say, that if you should find the prisoner at the bar guilty of any thing at all, and should not give him the full benefit of that verdict of not guilty which Glengarry had from your respectable predecessors, you will thereby, whatever degree of censure your verdict may truly be meant to imply, hold him out to the world as more guilty than the gentleman now mentioned. I cannot



imagine, however, that the cases will stand a moment's comparison; or that you will be either asked, or yourselves disposed, to pronounce a verdict touching him by the sentence of culpable homicide, or thus give the public any reason for believing that, as Glengarry, in these circumstances, was unanimously found not guilty, Mr Stuart's case must be more unfavourable when you find him guilty in any degree.

The last case which I have mentioned occurred in 1811, and arose out of an unfortunate quarrel between two young men, one the military surgeon, and the other a captain in the same regiment. There, too, though the character of the survivor, as well as that of his victim, appeared to be highly honourable, the cause of quarrel originated with him. He gave the first offence, and to the last refused to make any apology. Some trifling dispute arose at the mess, on account of Cahill having, contrary to the regulations of the mess, carried the file of a newspaper to his own room when sick. He laughed at the matter, and when informed of it by a friend of Captain Rutherford, (for that was the name of his antagonist,) he said that the thing must have arisen from personal pique; and upon being pressed to say whom he meant, he said, I don't mean to say any thing coverly,—I believe Rutherford has a personal pique at me. Rutherford naturally took this amiss, and no satisfactory explanation being offered, the parties, the same evening, went out, with two very young men as their seconds, to a quarry in the neighbourhood, or some such miserable place. At that time, many opportunities were given the young man there, but he would not apologize. They fired, and Rutherford was shot. Cahill was brought to trial, and I hold in my hand the notes taken, both by my learned friend Mr Murray, and by Mr Mackenzie, of the statement made on that occasion by the Learned Judge who presided, the Lord Justice-Clerk, now Lord President. "His Lordship said," in addressing the Jury, "that he would detain them but with a very few words. This was a case of a very distressing and afflicting nature. It was particularly distressing to those engaged in its determination; for it was impossible to disguise the truth, that the manners of the times, and the feelings of the people, were here in direct opposition to the law of the land.—As to the facts connected with the present case, all parties were agreed. It had been proved, and was admitted, that the deceased Captain Rutherford had been killed by a shot fired at him by the prisoner. His Lordship considered it his bounden duty to tell the jury that there could be no doubt as to

the law of Scotland, which declared that where one man killed another in a deliberate duel, this was as much to be regarded as a homicide, as if the deceased had met his death in any other criminal way. There being no doubt as to the law, there would, in any other case, be as little as to the verdict. But it was impossible not to see that these were circumstances which left a doubt. These circumstances were before the jury, *and it was for them to judge whether the law was applicable to this case*, and whether they would strictly carry it into effect. There was one circumstance, however, which his Lordship said he would mention, that might perhaps tend to relieve their minds of difficulty, if they felt any. When the prisoner surrendered himself in order to stand his trial, he was imprisoned on a charge of murder. After his incarceration, a petition was presented to his Lordship to liberate him on bail, but he refused this, as he had never known an instance of a person accused of the crime of murder being liberated in that manner. A few days after this, another petition was given in *with consent of the Public Prosecutor*, on which the prisoner was liberated. In giving this consent, it was obvious, that the Public Prosecutor did not consider the charge against the prisoner as amounting to murder. The jury would perhaps consider it rather hard in him to come forward now, and ask the infliction of a punishment, which corresponded with the crime of murder."

A verdict was pronounced, finding the pannel, with two dissentient voices, not guilty; upon which the presiding judge said, "Gentlemen, you have given a verdict *such as was to be expected* on the occasion." You have in this speech as direct an encouragement to a verdict of not guilty as could well be imagined; and after the verdict is returned, you have the judge declaring that it was exactly what he expected. Is it possible then to hold that our Courts now think that *all* killing in a duel is necessarily murder?

And now, Gentlemen, having detained you so long on the law and the precedents by which it is illustrated, I do not intend to go into the circumstances of the case. Look at the facts. I will not say the provocation given to Mr Stuart, that would be a poor expression. I say look at the circumstances of unmerited and atrocious abuse of which this gentleman was made the victim, and of which, when he found that the author was his equal in rank, it was impossible for him to remain a patient victim, without incurring actual and merited disgrace, and giving credibility to those imputations which, till then, no one could believe

against him. I shall follow the example of the Public Prosecutor in abstaining from detail. But look at his conduct throughout—Look at his forbearance, and the measures he took before he knew the party with whom he had to do—his application to the Sheriff for protection after he was bound over to keep the peace—his regular application to a court of law for the only redress that could be afforded against a printer, the real calumniators being in disguise. Lastly, look at his course of proceeding after he had a prospect of discovering the original papers, every part of which is now proved to have been marked by the most scrupulous propriety. Look at his conduct, so correct and proper, so moderate, temperate, and firm, in all that he did in getting these papers. He gave no promise to Borthwick—he paid no debt for him—he left him to act as he liked—Borthwick said, “I will save myself by giving up the authors!” Mr Stuart said in the most manly manner, I will not tempt you to do an act of a doubtful kind. He had not the least reason to doubt that Borthwick had a full legal right to exhibit these documents; and in truth he had. He got the papers. But he did not proceed instantly to vengeance. He took the highest advice that any man in his circumstances could procure, and he followed implicitly, temperately, and with perfect docility, the instructions which the noble and excellent person by whom he was guided thought fit to give him. They together conducted the negotiation that ensued, with complete temperance and forbearance. Renewed instances were given in the course of this of the extreme placability of his nature, joined, throughout, with the greatest manliness and resolution of character. In spite of those accumulated and long continued calumnies from which he had suffered so much, Mr Stuart was still willing, and authorized Lord Rosslyn to state, not merely that if Sir Alexander Boswell would disown the papers, but that if, even avowing them, he would say that it was a very bad joke, of which he was ashamed, and that he meant no imputation on Mr Stuart’s honour, even then he was willing to have received such an apology, and allow the matter to proceed no farther. This was refused by Sir Alexander Boswell, he recognizing himself, in the same instant, as the author of the song which has been so often referred to, and of other writings of a similar description, for all his avowals relate to a plurality of attacks. It is not a little meritorious that Mr Stuart should have made such an offer, for it is to be recollected, he was in possession of irresistible evidence of Sir Alexander Boswell’s connection with all that had been written.



Can any thing, then, I say, be more beautiful, more satisfactory, more free of all animosity, hostility, or even of undue pride, or infirmity of human nature, than this? But these his most reasonable offers being rejected, the course he took, I say, at once, was *inevitable*. I do not plead for it the apology of provocation. It was not done in heat of blood, or under the influence of any *passion*, criminal or venial. It was the deliberate act of a wounded heart, and a mind convinced and overwhelmed with the sense of its absolute necessity. In the long vista of his repeated meditations, in the cool anguish of nights and days, he saw and felt that he could not live without doing that which brought his own life into hazard, and, what to him was more painful, brought the same danger to his enemy. He was actuated by no violence, no heat of feeling; his actions now were only in unison with what his words had been before; and these showed that his motives were pure, defecated from any stain of anger or malignity. From first to last there is proof that his heart was overwhelmed with the painful sense of what he had unwillingly done to the unfortunate man who injured him; and if his courage and firmness are undeniable, while exposed to danger, the relents and kindness of his heart are equally displayed when it was over. What he said to Mr Liston and to Lord Rosslyn, is confirmed by that most pathetic interview with Mr Gibson, when he exclaimed, "Would to God I *had* taken aim, and then I might have missed him." When you compare that with the scenes and recollections which had led to it; when you find him agitated and overwhelmed, you must be satisfied that slaughter was not wished for by this person, that nothing was desired by him, but the restoration of his own dignity; you must feel that the fatal act was forced upon him, as irresistibly as if he had been the involuntary executioner of a judge's warrant, or a being doing the behests of a higher power. This gentleman, who was called, in language that disgusts and astonishes one, even in the repetition, sometimes a coward, and sometimes a ruffian,—who as a coward should have exulted in his safety,—as a ruffian have triumphed over his fallen foe? What does he do in this moment of instinctive feeling? Why, Gentlemen, you find him dissolved in speechless grief. He cannot express in language the misery he feels, upon witnessing the fate to which his unlucky hand had just consigned his enemy. His emotion, indeed, resembles more the meltings of a female bosom than the agitation of a male. When forced from this scene of distress and danger to him, and driven to a foreign land for his immediate safety, we there find him still

pursued by his melancholy reflections ; and when Mr Allan communicates to him the certainty that Sir Alexander Boswell was dead by his hands, his burst of grief is overwhelming and frightful, and when he tries to relieve him by the consideration, that Sir Alexander's death was brought upon him by his own act, while he (the prisoner) was free from evil design, and forced to what he did, his conduct again is a demonstration of the purity and kindness of his soul ; for what does he say ?—Does this heartless ruffian exult in the agonies of his victim ? Does this bully relate the tale of his prowess ? No—he is dissolved in tears at the misery he had caused—he is overwhelmed with speechless agony. And when desired to remember that he was a mere instrument in the hands of a Higher Power, he turns immediately to those who were about him, and says, “ It may be so ; but how can I think of the condition to which I have reduced his wife and children ? ”

After what you have heard of the character of Mr Stuart, I need not refer to the commentary which it affords on his conduct, as given in evidence. The character given of him by the friends who have known him longest and best, separated as they have been from him by political opinions, is just the character I should expect of a man who is proved, by the evidence of this day, to have acted as Mr Stuart has done ; and the way in which he acted, is demonstration that he truly deserved the character which had been given of his mind.

Take, then, his character, take his actions, and say whether you can find yourselves bound, whether you can find yourselves entitled to pronounce him guilty of having maliciously killed his adversary, instead of irresistibly and necessarily going out as he did, in vindication of rights a million times more dear than those in support of which it is lawful to kill. I cannot doubt your answer to this question,—one only can be given.

I am afraid my anxiety has induced me to trespass far longer on your patience than the difficulty or danger of the case required. There is certainly a puzzle in the words of some law authors. I have been anxious to dispel this. On the reason and justice of the thing there cannot be a doubt. For, after all the admonitions and solemn warnings of the scenes we have been reviewing, and in which we are now engaged, I doubt whether there be one among you who could bear to be called a coward, and branded as a ruffian, day by day, and after discovering that these injuries were inflicted by one known to be your equal in rank, would not incur all the hazards to which my unfortunate friend has been exposed, though few of us could imitate the mildness

with which he encountered them. I trust, therefore, you will not find him guilty, for doing that which, in his circumstances, you must feel that every one of you would have done ; that which you must in your hearts wish that the best and dearest friend you have in similar circumstances should do—that you will not, in a word, find a man guilty of acting maliciously while you believe him to have been absolutely free from malice. I trust, therefore, that, not in violation of the law, but in dutiful observance of its spirit and clear injunctions, and rigorously giving it effect, you will find him Not Guilty of the crime with which he is charged ; and thus restore him untainted to that society of which he is the delight, and in which he performs so many useful offices ; and, at the same time, in part at least, to that peace of mind which, with his feelings and his heart, I fear it is not in the power of your verdict, or of any human tribunal, ever effectually or completely to restore.

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THE LORD JUSTICE-CLERK.

*Gentlemen of the Jury*,—In this important case, which is now brought to a close, I proceed to submit to your consideration such observations as, in the discharge of my duty, it is incumbent on me to state to you, before you declare the verdict you are to give.

I am extremely happy I have the honour to address a Jury of such respectability as that I now see before me ; and extremely gratified, as I am sure the Court in general is, with the great patience and attention you have bestowed upon this trial. I have not a doubt but you will consider it to the end with the same patience ; that you will reflect upon it with caution and circumspection ; and return a verdict which, in your consciences, you shall think to be founded in wisdom, justice, and truth.

It is necessary for me to call your attention, in the first place, to what I consider to be the law of Scotland as applicable to this specific charge. The charge exhibited against the unfortunate gentleman at the bar is that of wilful murder, which is stated in the indictment to have been perpetrated in a duel with the late Sir Alexander Boswell, on the day there mentioned.

You will observe, that the charge is, that, having conceived malice and ill-will against the unfortunate gentleman now no more, the prisoner did challenge him to fight a duel ; that a



meeting was concerted in consequence, which meeting took place in the neighbourhood of Auchtertool, and that there the deceased received that wound which terminated his existence. Now, the nature of this charge, apart altogether from the defence, is that of a killing or slaughter perpetrated in a duel, which duel is stated to have been concerted beforehand ; and it is, therefore, necessary to call your attention to the authorities in our law, in regard to a charge of this nature. I am bound in duty to bring the law distinctly into your consideration, in reference to the charge as laid, and in reference, moreover, to that defence which has been urged by the two learned gentlemen, who addressed you for the prisoner with such consummate ability and eloquence, and to say whether the facts of this case bear them out or not in this their defence.

I prefer stating the law in the words of our authors, rather than in my own words, and I begin with mentioning an ancient writer, Sir George Mackenzie, who has a distinct article, or *title*, as he calls it, on duels, on the unlawfulness of which he pronounces a clear and authoritative opinion, on which I shall not trouble you with enlarging, but simply refer you to his emphatic introduction : “ Duels are but illustrious and honourable murders ; and, therefore, I have subjoined this title to the title of Homicide : This is that imperious crime which triumphs over both publick revenge and privat virtue, and tramples proudly upon both the law of the nation, and the life of our enemy. Courage thinks law here to be but pedantrie, and honour persuades men, that obedience here is cowardliness.” (*Mackenzie’s Crim. Instit. Tit. XII. p. 72.*)

I shall now call your attention to the authority of Mr Baron Hume, who, though still living, is the highest authority that can be resorted to, and whose work on the criminal law is daily founded on in this Court, and is deservedly quoted as the highest authority, both at the bar and on the bench. Mr Hume, in treating of the several pleas regarding self-defence, expresses himself thus : “ Even when all these considerations unite in support of the pannel’s plea, as relative to the moment of killing, there may, however, be one circumstance more in the case, which shall hinder them from procuring his complete acquittal. This is, if the pannel has himself in any degree been the cause of the fatal strife ; and this he always is in the estimation of the law, when he and the deceased meet in pursuance of a concerted appointment to fight a duel. For this deliberate resolution to kill a fellow-creature, the law cannot but hold both par-

ties equally and deeply blameable ; and the full plea of *self-defence* is, therefore, out of question in all such cases, whatever may have been the origin and history of the quarrel, and though the deceased have fallen a victim to his own insolence or indiscretion. As little can the survivor have the benefit of an entire justification, on account of any favourable circumstance which happens in the course of the combat, or of the conference between the parties after they have met upon the ground. Put the case that John and James deliberately appoint to fight with mortal weapons ; and in the course of the combat James is wounded and retires, and calls to John to desist ; but John refuses, and follows up his advantage so hotly, that James, purely to save his life, is at last constrained to kill. If this is not even a case of murder, (and I rather think it so,) at least it is exclusive of the plea of self-defence ; because the danger and the necessity are occasioned by John himself, are the result of a situation which he has deliberately courted." (*Hume on Crimes*, Cap. VI. p. 224.)

He then puts the case of Robert Robertson: " In the case of Robert Robertson, it was even judged to be murder in the survivor, though he offered to prove, that, on his first coming to the field, he earnestly declined the combat, and that he was threatened and reviled, and drawn upon by the deceased, so that he had no choice, and was forced to defend his life. But, though urged to the effect of *alleviating* only, (and I rather think it *was* relevant to *that* effect,) the plea was disregarded, and the libel alone was remitted to the assize. There is thus no room for a plea in mitigation even, and much less an entire acquittal, when the parties meet by a deliberate appointment, and fight fairly on equal terms, without either of them giving back or declining the strife. Nay, more, it has hitherto been held in our practice, (though it may be otherwise in the law of England,) that is, nothing less than murder, though the parties fight in heat of blood, and on a sudden quarrel ; if they go out, however, by agreement, with that design, and how fair and equal soever the circumstances of the combat."

In illustration of this he refers to the case of William Douglas in 1667, and of Gray in 1678, and a still later one in 1691, Master of Tarbet and others, in which these precepts of the law are completely established.

It is true, as Mr Jeffrey has stated to you, that these cases are all of an ancient date, and Mr Hume, after alluding to this case of Gray, has a note which I shall read to you, be-

cause in the last edition of his work, the learned author repeats his former view of the law, having distinctly in view the recent cases, which were very properly read to you by Mr Jeffrey: "Much intercession was used to save Gray's life; and on a bill to the Privy Council, he obtained a respite for a month, and even a remit to the Lords of Justiciary to reconsider the grounds of the verdict. But in the end, (says Fountainball, Vol. I. p. 2,) 'after the poor man was put in hopes of his life, he was beheaded. He died with more courage than could justly be expected from one of his education. It was urged for him, the confession proven was merely extrajudicial; and he was not presumed to be the aggressor, he being but a tradesman, and old, near the age of fifty, the other a gentleman, and young, and known to be a *romp*.'

"Though such is the undoubted law on the subject of duel, and exemplified in the instances mentioned in the text, it has so happened, that on several later occasions of trial for homicide committed on challenge to fight, the pannels have had verdicts of acquittal. This was the issue in the case of George Rae, 18th June 1798; and of Macdonell, 6th August 1798; and of Alexander Cahill, 2d and 3d January 1811."

Here, then, is the opinion of Mr Hume; and I call your attention to another author now no more, who had a very extensive practice in criminal law, and has left behind him a work of value on the subject. Mr Burnett, in treating of self-defence, expresses himself thus:—"It has been made a question how far *self-defence* is in any case pleadable, where there has been an agreement to fight, and parties have met in consequence of such appointment: It has been said, that, in all such cases, as the killer has brought the *necessity* on himself, and his agreement to fight bespeaks a deliberate purpose to kill, he cannot plead justification on the principle of *self-defence*, or even a mitigation of his guilt, on the footing of provocation and *heat of blood*."

"There seems, however, room for distinguishing between a combat where parties fight *de recenti*, immediately on the quarrel, and almost on the spot, and a combat after some interval of time, with due preparation of weapons, and an adjustment of the forms usually observed on such occasions. The first may truly be considered as a combat in *heat of blood*—the other as a cool and deliberate act, savouring of malice and revenge, and possessing all the characteristics of murder."—(*Burnett's Crim. Law*, Cap. I. p. 47.)



He then refers to the authority of Judge Foster, who is also mentioned by Mr Hume, and concludes thus: "It is agreed, however, on all hands, that a deliberate act of *duelling* excludes the plea of self-defence; and in strict law this holds, whether the indictment is laid merely for murder at common law, or on the act of James VI. against duelling; for where the act is deliberate, and of set purpose, and still more where it is the result of a previous concert, *self-defence*, properly speaking, can have no place; and, in such case, it can make no difference at common law, who was the challenger or first aggressor, though, under the statute, (1600,) the *provoker* (as he is there called) is punishable *with a more ignominious death*."

But he adds: "Notwithstanding of this, it may be difficult for a jury to lay out of view altogether, in a case of *homicide* in a duel brought to trial at common law, the circumstance on which side the original aggression lay, or the nature of the antecedent provocation, (and, much more, any alleged *unfairness* by inequality of weapons, or in manner of attack, or mode of fighting,) without regard to *who was the immediate challenger*; thereby making allowance so far for the notions of honour which usage and custom have sanctioned."

"We have a late example where the jury evidently proceeded on some of these grounds. This was the case of Lieutenant George Rae, 18th June 1798, who in a duel killed Lieutenant M'Vean, of the same regiment. Rae gave the challenge, but the deceased was the aggressor. It appeared in evidence, that he had given the lie to the prisoner in a public mess-room, and being desired by the corps to make an apology, he did so, but in so improper a manner, that the corps thought it an insult on them; on which he said he meant no insult to the corps, but to Rae, whom he afterwards called 'scoundrel.' The consequence of this was a challenge from the prisoner. The libel was laid as for murder at common law, but the jury returned a verdict of 'Not Guilty.'"

I have brought these two opinions of Mr Hume and Mr Burnett fully and distinctly before you, and demanded your attention to the cases to which they refer, as showing the course of modern practice on this subject. Farther, as both Mr Hume and Mr Burnett mention the authority of the law of England, I think it right that I should lay distinctly before you the state of that law; and I shall quote the highest authority for it, that of Judge Foster, in his discourse on

*Homicide.* He expresses himself thus: “ But in this, and indeed in every other case of homicide upon provocation, how great soever it be, if there is sufficient time for passion to subside, and for reason to interpose, such homicide will be murder.”—*Foster’s Crown Law*, Disc. II. cap. v. p. 296.

Then he puts the case of a person finding another in the act of adultery with his wife: “ For let it be observed, that, in all possible cases, deliberate homicide upon a principle of revenge is murder. No man, under the protection of the law, is to be the avenger of his own wrongs. If they are of such a nature for which the laws of society will give him an adequate remedy, thither he ought to resort. But be they of what nature soever, he ought to bear his lot with patience, and remember *that vengeance belongeth to the Most High*.

“ Upon this principle, deliberate duelling, if death ensueth, is, in the eye of the law, murder. For duels are generally founded in deep revenge. And though a person should be drawn into a duel, not upon a motive so criminal, but merely upon the punctilio of what the *swordsmen falsely call honour*, that will not excuse. For he that deliberately seeketh the blood of another upon a private quarrel, acteth in defiance of all laws, human and divine, whatever his motive may be.

“ But if, as I said before, upon a sudden quarrel, the parties fight upon the spot, or if they presently fetch their weapons, and go into the field and fight, and one of them falleth, it will be but manslaughter; because it may be presumed the blood never cooled.

“ It will be otherwise if they appoint to fight the next day, or even upon the same day, at such an interval as that the passion might have subsided; or if, from any circumstances attending the case, it may be reasonably concluded that their judgment had actually controlled the first transports of passion before they engaged. The same rule will hold, if, after a quarrel, they fall into other discourse or diversions, and continue so engaged a reasonable time for cooling.”

In this opinion, Judge Foster is confirmed, by the opinions of single Judges, and by that of the whole body of the Judges of England, as delivered in different cases mentioned in the Books; so that there cannot be a doubt, that the law of England is correctly stated by that learned person.

Having thus stated to you the law, as applicable to such cases, it is now necessary for me to advert to what the real

nature of this charge is, as stated, first, in the indictment and evidence for the Crown ; and, second, in the defence.

This charge states, that malice was entertained by the prisoner at the bar against the deceased, in a way somewhat different from that ordinary species of malice which the law itself implies in the case of a deliberate and preconceived murder ; for, here it is said, “ In so far as you the said James Stuart having conceived malice and ill-will against the late Sir Alexander Boswell of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel or duels, you did, upon the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises, in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander ; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried away from the said premises, in Nelson Street of Glasgow, sundry writings, the property, or in the lawful possession of the said Robert Alexander ; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings ; and having found, or pretended to have found, among them some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell,” and so forth.

Now, in the first place, it is for you to say,—whether this narrative is made out ; but, indeed, I did not hear any thing said by the Public Prosecutor, that he had made out that part of the narrative of the indictment. Farther, the evidence for the prisoner seems to have shewn, that he had no sort of conception, before he had made the discovery in Glasgow, of who was the author of the offensive articles. You will recollect the testimony of Mr Spalding, Mr Hen-



erson, and Mr Gibson, as to the utter ignorance of the prisoner on this point. Their testimony is clear and explicit as to this, and distinctly proves that, at all the confidential meetings, though Mr Stuart was convinced that Borthwick was not the author of these libels, yet he had not the slightest conjecture that Sir Alexander Boswell was at all concerned with them; and you will recollect, that, though Spalding and Henderson, who accompanied him to Glasgow for the purpose of getting access to these papers, were with him both on the way and there, not a syllable escaped him by which they were led to suppose that he suspected Sir Alexander Boswell to have had any concern in the matter. Nay more, both Spalding and Henderson positively swear, that when the papers were examined, and something was said by Borthwick which led them to suspect Sir Alexander Boswell, Mr Stuart declared that he had never suspected Sir Alexander, and seemed to feel real surprise and astonishment.

It is for you then to say, whether you can, in reference to this part of the narrative of the charge, find, that the prisoner had previously conceived malice against Sir Alexander Boswell, and that, in furtherance of this, he had set out to Glasgow to obtain papers which should enable him to prove that gentleman's connection with the matter. To me it appears, that this part of the narrative, so far from being proved, has been completely negatived, even by the evidence of the Public Prosecutor himself.

The case being discharged of this part of the indictment, the question that remains is, Whether, in the view of the facts which I have stated to you, there is not an obligation on you to find a verdict against the prisoner at the bar, on account of the duel itself, on a review of the evidence laid before you? Now, Gentlemen, at this hour of the morning, I shall not consume your time with a detail of that evidence. Generally speaking, the evidence has been given in a very distinct manner; and I would, in particular say, that the evidence of the Noble Lord, one of the witnesses, was given in the most correct manner I almost ever heard.

In the *first* place, then, you will take into your consideration the alleged offensive articles of which the unfortunate gentleman at the bar complained, and had good cause to complain. You have it in evidence that, in the newspaper which has been mentioned, various offensive articles of the most aggravated nature, with regard to his character and reputation as a man of courage and honour, did appear,—

may, that, though some of them are not quite so gross, a reiteration of these charges and insinuations continued for some considerable time. I need not remind you of the tenor of the song, nor of the letter signed *Ignotus*, nor of the other two articles. They were read to you,—such parts of them, at least, as were material and most offensive,—by the learned counsel at the bar.

You will also consider the evidence that has been produced as to the manner in which Mr Stuart got access to these writings. I have already glanced at this in reference to another point of the question. But you will now consider whether the evidence warrants a conclusion that Mr Stuart was guilty of any impropriety in the mode of getting access to them. Now, in the *first* place, I would remind you, that you are not trying him here for any such charge. But, even if I did hold it as a charge before us, I would ask whether, after the evidence given by Mr Henderson, the country agent, who conveyed the offer, and of Mr Spalding, the town agent, who communicated it here, and of Mr Gibson, it can be considered that there is any proof that Mr Stuart took any improper steps towards the acquisition of these writings?

The evidence goes to this, that Mr Stuart got information through Henderson, that Borthwick was disposed to compromise the action of damages, and had desired Mr Henderson to make proposals; that Mr Stuart promised no terms in return; but said, if Borthwick gave up the author or authors of these libels, he would then consider what he should do; that, at present, he would enter into no engagement of a positive nature. The evidence of Mr Henderson positively negatives any suspicion that Mr Stuart advanced one farthing of the money which enabled Borthwick to leave the jail. Henderson positively swears that the L.50, which he consigned, was money advanced out of his own proper funds, and that not one farthing came from the prisoner at the bar. Mr Gibson tells you, that the consignment was made in consequence of what had already happened to Borthwick in being ousted from his office; and that, lest Alexander should get hold of the manuscripts and destroy them, he advised that no time should be lost in liberating Borthwick from jail; adding, that he would rather advance the money himself than run that risk.

But it is not established that Mr Stuart offered any thing at all. Whether Mr Stuart went to Glasgow, or remained there or not, for any time, we have no business to inquire.

But as to any appearance of his being concerned in any undue invasion of the premises we heard no evidence whatever.

You will next consider what the evidence says of the authorship of these papers. It must be fully in your recollection, that Lord Rosslyn said he had examined them with care, and in particular the offensive song, looking at the paper and examining the water-marks and post-marks ; and his Lordship has told you that he conceived himself authorized to say, that there was strong presumptive evidence that these articles were in the hand-writing of Sir Alexander Boswell. I therefore conceive that a most material circumstance for you to consider is,—and the prisoner is fully entitled to the benefit of it—the moderate communication which the Earl of Rosslyn thereupon made, as to the terms of which his Lordship was fully confirmed by the evidence of Mr Douglas ; namely, if Sir Alexander Boswell, on the one hand, should say that the papers were not in his hand-writing, or that he had nothing to do with them, that that would put an end to all further inquiry, and would be held as negating all evidence ; on the other hand, that if he would say, supposing them to be his, that the thing was a bad joke, and he was sorry for it, the matter would then be allowed to drop.

Sir Alexander Boswell acknowledged the signed letter to be his, but he declined saying any thing as to the unsigned papers. He did this by the advice of his friend, who thought it the most prudent course ; though Mr Douglas, in his evidence, has admitted that he had no doubt, from his conversations with the unfortunate gentleman deceased, that they were written by him,—two verses of the song, indeed, having been repeated by him to Mr Douglas. But in the delicate situation in which that gentleman was placed, it was deemed right to take the course which he did.

Something was put by way of hypothesis to Lord Rosslyn and Mr Douglas, as to what would be their opinion, supposing that they were not sure that these papers were in Sir Alexander's hand-writing. I am much afraid, however, it is not necessary for us to speak to that at all ; for you have heard the evidence with regard to the Song, the letter signed *Ignotus*, the paper with the name *Mark Tod*, and the letter beginning "The late Lieutenant James Stuart." You have had evidence as to these, of the truth of which there cannot be the remotest suspicion ; and I have no hesitation in saying, that, in my opinion, it leaves no doubt as to whose hand-writing they were. You have, for example, Mr Lizars, a witness for the Crown, who was desired to look at these articles along with the



others, and who told you, that though he formerly held the opinion that the song was not in the same hand-writing with the letter, yet, on farther consideration, he did come to think that they were the same. He detailed his reasons for thinking so, such as that a great many letters were exactly similar, and mentioned other things which satisfied this professional man that the writings were in the same hand. But besides, you had Dr Coventry and Mr Dalrymple Gardner, who swore that there could be no doubt as to the hand-writing.

I need not detain you with the proceedings to which this discovery led. I only wish that the binding over by the Sheriff could have been more effectual; and I know that had I been applied to, I should have done my utmost to bind them over, and I should only have regretted that my own powers in this respect were not more extensive.—The result of all was, that the parties met, and took their ground, each armed with a pistol, that they both fired together, the prisoner first, and the deceased after a momentary interval, and the deceased fell. On this part of the case, the evidence of Lord Rosslyn, Mr Douglas, and the surgeons in attendance, is complete.

Therefore, Gentlemen, you have to attend, in the first place, to the evidence of what led to this unfortunate quarrel; the nature of the provocation, of the wrong of which the gentleman at the bar complained, and which is to be found in the terms of those articles that were put in evidence; the measures which were attempted to prevent a meeting; the proposal which was made through the medium of Mr Stuart's second, and all that took place after their failure. You have also, of course, to attend minutely to the conduct of Mr Stuart, both previous to and on the field. You have the communication made by him to his surgeon Mr Liston, on the road, distinctly stating that he had no malice against the deceased; that, on the contrary, he was related to him distantly, but that no alternative was left as to the course which he must pursue. Then, you will recollect the evidence of Lord Rosslyn, that in nothing that he said did Mr Stuart appear to be actuated by malice or rancour; but that, on the contrary, he felt himself to be under an inevitable necessity of taking the step which he did, merely to vindicate himself from the injury he had received, and with no intention of deliberate malice against Sir Alexander Boswell; in the propriety of all of which Lord Rosslyn told you that he entirely agreed.

You will take these matters into recollection, and keep in view also the evidence given by Mr Gibson as to the very becoming manner in which Mr Stuart expressed himself to

him after the unfortunate rencounter,—the great concern he showed,—his uncommon grief,—the agony in which he was when he communicated the fatal intelligence,—the opinion which Mr Gibson felt himself able to draw, that he had not the slightest personal animosity against the deceased gentleman. You will compare all this with the evidence you have, both from Mr Douglas and Lord Rosslyn, as to the fairness of the proceedings of the prisoner, on the field,—his wish to show civility to Sir Alexander Boswell, which Lord Rosslyn thinks had not been observed by the deceased,—but the intention to show it is, of course, a favourable circumstance. Then you will recollect the evidence you heard as to Mr Stuart's conduct in France, when he received the intelligence of his antagonist's death. Mr Allan swears, that he received it with great emotion, and in a manner which affected him much at the time,—that his sorrow continued afterwards unabated,—that for a fortnight, during which Mr Allan continued to see him, he brooded over it much, seeming to feel it deeply; and when Mr Allan intending to comfort him, reminded him, that he was forced to what he did, and that the other had brought it all on himself, he made the affecting exclamation,—yes! but remember his poor wife and children. He did accordingly observe, that the prisoner was deeply affected and grieved, and that he wept severely, so much so, that the witness said he himself was deeply affected.

Then you have another circumstance in the prisoner's defence, and in cases of this description it must necessarily weigh greatly, for in a case of murder, which undoubtedly requires a conviction in the minds of those who try it that there was a malicious intention of killing, the evidence of *character* is of great importance. On this point you have complete testimony. You have the evidence of Lord Rosslyn, Lord Kinnedder, Dr Robertson, Mr Erskine of Cardross, Mr Richard Mackenzie, Mr Francis Walker, Mr Walter Cook, and Mr Hay Donaldson. I hope I have not omitted any. Are there any others? (*Upon being reminded from the bar of Mr Gibson's name*) Yes! Mr Gibson, surely, a valuable testimony.

Now, with regard to the testimony of these witnesses, I should, with the greatest pleasure, read to you the words of all these gentlemen, for I have taken a note of what they said,—but certainly it is not necessary; for sure I am you will all agree with me when I state to you, that I never had occasion to witness a stronger, more perfect, and more entirely

concurring body of evidence in favour of character, than the prisoner has this day exhibited. And it is another remarkable feature of the greater part of this evidence, that it has, with extreme good taste, been extracted from the mouths of gentlemen who happen to be politically opposed to the prisoner, but who invariably give the most unequivocal testimony to his good conduct, not only in general, but by stating some remarkable instances of the amenity of his temper. Mr Erskine stated, in emphatic language, that the prisoner appeared to him to possess more of the milk of human kindness than any man he had ever known. Mr Richard Mackenzie, said, that he had been twenty years in a club with Mr Stuart, and that he had never heard him say an ill-natured thing of any one ; and his late partner, Mr Hay Donaldson, told you that, though their separation was not sought for by Mr Stuart, neither this circumstance, nor any other, ever created the slightest difference between them ; and that Mr Stuart possessed a remarkable, mildness of temper, —was far from being quarrelsome, on the contrary, was always disposed to make up quarrels.

Now, with such a body of evidence as this, it is impossible to require higher testimony of the improbability of a crime such as that here libelled ; and, therefore, keeping the rule of law in view, which I have been under the necessity of laying before you, and taking into your consideration the whole evidence on both sides, every part of which you will weigh with attention, you will now consider, whether the prisoner is guilty of the crime of murder as laid against him, or entitled to the verdict of Not Guilty, which he demands of you.

Gentlemen, With respect to the defence set up this day, which, if I understand it rightly, was not so much rested upon the provocation given to the prisoner, as upon the inevitable necessity that was imposed upon him of taking the course which he did,—it does not appear to me advisable, for the sake of the law, to divest the case altogether of the nature of the *provocation* given ; neither do I conceive it the safest course for the pannel ; for it comes to be a very difficult and delicate consideration, indeed, whether, if you lay that matter apart, and then defend this case of a determined duel, terminating fatally, by saying that it was undertaken for no other purpose than rescuing the prisoner from the situation in which he was placed ;—this, I say, appears to me to be a delicate and dangerous position to put the case upon ; for I apprehend the rule of law is quite clear in cases of this description, that no false



punctilio or notion of honour can vindicate an act which terminates fatally to another fellow-creature. But take that consideration, urged as it was with all the powerful eloquence of the learned counsel, and take along with it the injuries received by the prisoner,—the uncommon provocations given,—the terms of accommodation offered and rejected,—and combine them all together; the temperate conduct of the prisoner in the field; his grief for the fatal issue of the meeting,—then, in my humble apprehension, you will have a case before you which, in reference to the charge made, and the evidence led in support of it, is well deserving of your most calm, deliberate, and dispassionate consideration.

In order to make way for the conclusion, to which the learned gentleman thought himself warranted to come, in asking a verdict of Not Guilty, he expatiated on the subject of duels in general, and endeavoured to justify them, or if not altogether so, to palliate them, by referring to a variety of moral writers, some passages from whose works he read to you. Now, I beg leave to say, that these may be all extremely good topics in a general discussion, but they are not what, as a Judge sitting here, I am entitled to lay any stress upon: I must look alone to the authority of law writers, and to the practice of Courts. As to what moral writers may have said of the advantages which may have arisen from this practice of duelling, this affords no safe ground of judgment.

But there were other topics referred to by the learned counsel, and which I admit are legitimate sources of judgment for you,—adjudged cases, and charges of judges in trying these cases. Mr Jeffrey has stated, and I have no doubt of the accuracy of his statement, that convictions in cases of duelling, where everything has been fair, have been extremely rare. No one can doubt of this, and it is admitted by both the authors whom I formerly quoted. Mr Burnett notices the case of Rae, the result of which he approves, but he speaks differently as to the case of Glengarry. Mr Hume, you will recollect, alludes to these cases, as well as to that of Cahill, and also says how much juries are disposed to acquit where the proceedings have been fair. You have heard, also, the names of respectable jurymen concurring in such verdicts; but you must lay these out of consideration, and only keep in view, that, as former juries have exercised their discretion in the discharge of their office, so you must do in discharge of yours, and come to similar conclusions, only if you see sufficient grounds. You will consider the charge, the evidence for

the charge, and the strong body of evidence which has been brought forward on the part of the prisoner. You will recollect that, as to the narrative part of the charge—that of malice in seeking a quarrel—it has been directly negatived; and, with regard to any thing like personal rancour, there is the strongest evidence that no such feeling entered into the mind of the prisoner. Considering, therefore, the circumstances in which he was placed—the strong necessity he felt himself under to vindicate himself—the deliberate way and manner in which he set about his vindication, not proceeding instantly himself, but sending to the Noble Lord, whom he employed as his friend, who told him that he had no other alternative but to act as he did—the total absence of all rancour—the great sorrow that he expressed on account of the fatal consequences of the meeting, and the uncommon body of testimony to the mildness of his character,—taking all these things into your consideration, you will consider whether you can, with propriety, pronounce him Not Guilty.

Gentlemen, before concluding, I must say, that I am not one of those who can give the slightest countenance to such proceedings as those which led originally to this fatal business. Neither I nor any other Judge in this Court can give the slightest countenance to publications such as those which were directed against the gentleman at the bar. It is one of the greatest misfortunes and evils of the present day that we have to witness the disgraceful licence of the periodical press; and I do lament, from the bottom of my heart, that the unfortunate gentleman deceased should have had any concern with writings of this description,—for it is impossible to shut your eyes against the evidence by which it is proved that Sir Alexander Boswell was engaged in these writings, and that the prisoner at the bar was the object of his attacks.

You will, therefore, keep these considerations in your view, and pronounce such verdict as the circumstances of the case shall seem to you to authorize.

The Jury, without retiring, after a few moments consultation, returned their verdict *viva voce*, by their Chancellor.

Sir JOHN HOPE.—My Lord, The Jury unanimously find Mr Stuart *Not Guilty*.

The verdict was received with strong marks of satisfaction by the audience.

*(Interlocutor of the Court.)*

The Lord Justice-Clerk, and Lords Commissioners of Justiciary, in respect of the foregoing verdict, assoilzie the panel *simpliciter*, and dismiss him from the bar.

D. BOYLE, I. P. D.



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APPENDIX.

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## APPENDIX.

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### No. I.

EXTRACT LETTER from WILLIAM ADAM, Esq. M. P.  
now the Right Honourable WILLIAM ADAM, Lord Chief  
Commissioner of the Jury Court, to Mr STUART.

*(Produced with Defences for Mr Stuart.)*

My Dear Sir, *Bloomsbury Square, April 17, 1810.*

I have read with great attention your letter to James Loch of the 13th instant, and I cannot resist letting you know what my feelings are as to the very great obligation all the country, and particularly that part of it connected and benefited peculiarly by the Great North Road, are under to you. These have been most disinterested and kind exertions. Your services about the whole business of the Ferry have likewise been most important, and are, in my opinion, equally entitled to the public thanks, which any trifling personal accommodation to yourself could never have excited you to, without the general and liberal inclination to promote the public good.

Yours, most faithfully,  
WILLIAM ADAM.

### No. II.

EXTRACT LETTER from Ditto to Ditto.

My Dear Sir, *Bloomsbury Square, April 25, 1811.*

You did admirably in perpetuating the tolls, and we who are in the line, as well as the whole country, are under the



greatest obligations to you (who are not) for the great aid you have given us. Indeed, without your efforts, both the road and Ferry must have gone to the dogs.

Yours, most sincerely,

WILLIAM ADAM.

### No. III.

#### RESOLUTIONS of a GENERAL MEETING of the NOBLEMEN, FREEHOLDERS, &c. of the Western District of Fifeshire.

In a General Meeting of the Noblemen and Gentlemen, Freeholders, Justices of Peace, Commissioners of Supply, and Heritors of the Western District of the County of Fife, held within the Town-house of Dunfermline, 4th January 1816, in consequence of a letter of requisition inserted in all the Edinburgh newspapers, published on, and since 29th December 1815, to consider of the proper steps to be taken upon occasion of the Lord Lieutenant of the county having informed Mr James Stuart, younger of Dunearn, that his name is omitted from the new Commission of the Peace for the County of Fife, lately passed under the Great Seal, at the instance of the Lord Lieutenant; which requisition is signed by the Right Honourable the Earl of Moray; the Right Honourable the Earl of Elgin; the Right Honourable the Lord Chief Commissioner; Sir Charles Halkett of Pitfirrane, Baronet; Mr Strachan Blackwood of Pitreavie; Dr Robertson Barclay of Keavil; Mr Hunt of Pittencrieff; Mr Erskine of Kinnedder; Mr Scotland of Luscar; Mr Walker of Sunnybank; and Mr Cuninghame of Duloch.

#### SEDERUNT.

The Right Honourable Francis Earl of Moray,  
The Right Honourable Thomas Earl of Elgin and Kincardine,  
The Right Honourable the Lord Chief Commissioner,  
Sir Charles Halkett, Baronet, of Pitfirrane,  
Captain R. H. Moubray, R. N. and C. B.  
Dr James Robertson Barclay of Keavil,  
James Hunt of Pittencrieff,  
John Cuninghame of Duloch,  
Thomas Scotland of Luscar,  
John Scotland, younger of Luscar,

Robert Walker of Sunnybank,  
 Alexander Colville of Hillside,  
 Alexander Colville of Middlebank,  
 Major David Wilson, Provost of Dunfermline,  
 George Aitken, younger of Hill of Beath,  
 John Sutherland of Eastfield,  
 Robert Wemyss of Cuttlehill,  
 James Moodie, younger of Cocklaw,  
 Captain John Wardlaw, Dean of Guild for the Guildry of  
 Dunfermline.

Thomas Mill of Blair,  
 Henry Bardner of West Saline,  
 Andrew Colvill of Barnhill,  
 William Thomson of Stevensons Beath,  
 Dr James Stenhouse of Comely Park,  
 Robert Russell of Drumtuthil,  
 Hugh Gray of Bushes,  
 James Stenhouse of Northfod,  
 John Purvis, younger of Lochend,  
 James Douglas of Garvochwood.

The EARL of MORAY chosen Preses.

The Preses communicated to the meeting the following documents :

1st, The before-mentioned letter of requisition.

2d, Letter from Mr Thomas Horsburgh to Mr Stuart, dated 25th December 1815, which is in the following terms :—

My Dear Sir,

*Cupar, December 25, 1815.*

I am favoured with yours of the 23d last night. I am not at liberty, at present, to mention what names appear, or do not appear, in the new Commission of the Peace. I understand Lord Morton is to call the Magistrates together, on purpose to open it ; and the moment that is done, I will send you a full list of the whole nomination.

You was appointed a Justice of Peace, by an interlineation in the commission which passed in 1797, and which took place in July 1800, by the commission having been sent to London, and the seal being again applied by the Chancellor. Lord Kellie is in possession of the list of the new nomination.

I always am, with the highest regard,

My dear Sir,

Yours most faithfully,

THOS. HORSBURGH.

3d, Copy Letter from Mr Stuart to the Lord Lieutenant of the county in the following terms :—

*North Charlotte Street, Edinburgh,*  
*December 27, 1815.*

My Lord,

I am sorry to be under the necessity of addressing your Lordship, that I may, from the most authentic source, obtain the knowledge of a fact, upon which I shall have occasion to act, if it turns out as it has been represented to me.

Mr Cheape of Stratyrum having informed me, that my name is left out in the new Commission of the Peace, which your Lordship has obtained for the county of Fife; and that Lord Kellie, who has the list of the Justices of Peace in his hands, told him so, I wrote to Mr Horsbrugh, general clerk to the Justices of Peace at Cupar, to ascertain the fact. He informs me, in reply, that Lord Kellie has a copy of the list; and he adds, that he is not at liberty at present to mention what names appear, or do not appear, in the commission; and that he understands that your Lordship is to call the Magistrates together, on purpose to open it, and the moment that is done, he will send me the full list.

May I request of your Lordship to take the trouble to supply me with the information, which I have failed in obtaining from Mr Horsbrugh, in order that I may possess a correct knowledge of the fact from the most authentic source; and I trust that I am guilty of no impropriety in endeavouring to ascertain it, or in adding, that if your Lordship declines to make the communication which I solicit, I shall consider the fact to be as Mr Cheape has represented it.

I have the honour to be,

My Lord,  
 Your Lordship's most obedient servant,  
 JA. STUART.

The Right Honourable the Earl of Morton,  
 Lord Lieutenant of the County of Fife.

And 4th, Letter from the Earl of Morton to Mr Stuart, dated 28th December 1815, in the following terms :—

Sir, *Arniston, December 28, 1815.*

Your letter of the 27th, which followed me from Dalma-hoy to this place, arrived too late in the evening for me to think of immediately dispatching your messenger in such weather; I have, therefore, detained him until this morning.



I can have no hesitation, Sir, *in satisfying your curiosity*, by informing you, that the information which you have received from Mr Cheape of Stratyrum is correct, and that your name is not included in the new Commission of the Peace for the county of Fife.

I have the honour to be,

Sir,

Your most obedient humble servant,

MORTON.

James Stuart, Esq. junior of Dunearn.

The Meeting having had the fact of Mr Stuart's exclusion from the Magistracy of this county thus ascertained, and being most anxious to adopt the most speedy and efficacious, and, at the same time, the most respectful means of securing Mr Stuart's services to the district as a Justice of the Peace, upon the motion of the Lord Chief Commissioner, seconded by the Earl of Elgin, Resolved unanimously to make it known to the Lord Lieutenant of the county :

That Mr Stuart has been fifteen years a Justice of Peace for the county of Fife :

That he has, during these fifteen years, diligently and regularly acted in that capacity for this district, in which his country residence and a principal part of his property is situate :

That he has consequently given regular attendance at the Justice of Peace Courts held at Dunfermline :

That he has never permitted his business in Edinburgh, his necessary residence there during the greatest part of the year, or his numerous and important occupations, to interfere with his attendance, or with his duty as a magistrate of the county of Fife, either at the head town of the district, or elsewhere :

That Mr Stuart's conduct as a Justice of the Peace has been distinguished for knowledge, ability, and integrity :

That his unremitting activity and diligence, combined with his other superior qualifications for the office, will render his exclusion from the magistracy (in which his conduct is not only unimpeached, but is highly meritorious) an irreparable loss to the western district :

That besides the ordinary duties of Justices of Peace, there are certain local duties of the greatest importance to the public, which the Justices of the western district of the county of Fife have to discharge :

That those duties have in part been long attached to the office, and arise in part out of the act of Parliament which

passed in 1809, for the improvement of the Queensferry passage :

That many of the most important regulations for the good government of that Ferry require the authority of a Magistrate as well as that of a Trustee :

That Mr Stuart has, ever since the act of Parliament passed for the improvement of the Ferry, given constant attendance at the regular meetings, and on many other occasions :

That it is greatly owing to his unremitting exertions, in the double character of Magistrate and Trustee, that the public enjoy the benefit of that regularity, good conduct, and ready service now afforded at that passage :

That this Meeting, anxious as they are, and as they have already expressed themselves to be, to take the most effectual and respectful mode of securing the continuance of Mr Stuart's most important and unremitting services to this district, to the county, and to the public at large, hereby empower and direct the Earl of Moray, as their preses, to take the earliest opportunity of conveying this minute to the Earl of Morton, his Majesty's Lieutenant for the county of Fife, not doubting, that, when these things are brought thus distinctly to his Lordship's knowledge and observation, that he will adopt the proper course for having the name of James Stuart, Esquire, younger of Dunearn, inserted in the new Commission of Peace for Fifeshire :

That the preses do request a written answer to this communication on or before Tuesday next, that the district may be informed whether their recommendation is to be complied with :

That the Earl of Moray, the Earl of Elgin, the Lord Chief Commissioner, Mr William Erskine, Advocate, Mr Cuninghame, Advocate, and Mr Scotland, be a committee, to take such further steps as may be necessary, and to apply to the Convener and Sheriff-depute for a meeting of the county, if the committee should deem it proper :

That the committee be an open committee for all the gentlemen in the western district, to whom the requisition for this meeting was addressed :

That they do meet at Edinburgh or elsewhere, as the Convener may think most advisable :

That the Earl of Moray be the Convener.

Upon the motion of the Lord Chief Commissioner, the thanks of the meeting were unanimously voted to the Earl of Moray for his conduct in the chair ; and, upon the motion of the Earl of Elgin, the thanks of the meeting were also unani-

mously voted to the Lord Chief Commissioner for the services which he has rendered to the district, and for the trouble which he has taken upon the present occasion.

(Signed) MORAY, *Preses.*

Extracted upon this and the ten preceding pages, by  
(Signed) DA. BLACK, *Clerk.*

*Drumsheugh House, January 9, 1816.*

The committee, in consequence of a summons by the Earl of Moray, their Convener, met here this day.

Present,

The Earl of Moray,  
The Earl of Elgin,  
The Lord Chief Commissioner,  
William Erskine, Esq. Advocate,  
J. Cuninghame, Esq. Advocate,  
Thomas Scotland, Esq. W. S.

The Earl of Moray read a letter from the Earl of Morton as follows :—

*Dalmahoy, 6th January 1816.*

My Dear Lord—I received yesterday the honour of your Lordship's letter of the 5th, inclosing, by the direction of the very respectable meeting which took place at Dunfermline on the 4th of this month, the minutes of the proceedings of that meeting.

Having, at the instance of the county of Fife, applied for a new Commission of the Peace, it became incumbent on me, on my official responsibility, to recommend to the Lord Chancellor, for insertion in that commission, a sufficient number of such persons as appear to me to be properly qualified for discharging the duties of Justices of the Peace. I have accordingly done so, and I am convinced that the gentlemen whom I have so recommended will be found fully adequate to the discharge of these duties.

Since, however, so many gentlemen for whom I entertain the highest respect, have expressed so earnest a wish for the insertion of the name of Mr Stuart in the commission, I shall avail myself of this opportunity to testify that respect, by transmitting their recommendation to the Lord Chancellor. I have the honour to be, with great truth, my dear Lord, your Lordship's faithful and obedient humble servant,

(Signed) MORTON.



Lord Moray then read his Lordship's letter in reply, as follows :—

*Edinburgh, January 8, 1816.*

My Dear Lord—On my return from Mrs Douglas's funeral, I received your Lordship's most polite letter; and it will give me the greatest satisfaction to make the contents of it known to all the gentlemen to whom your Lordship refers. I have the honour to remain, my dear Lord, yours sincerely,  
(Signed) MORAY.

The committee resolved to transmit this minute to Mr Black, the clerk of the meeting held at Dunfermline on the 4th instant, with instructions that he should send a copy of this minute to every gentleman who was present at the meeting at Dunfermline on the 4th instant.

#### No. IV.

LETTER—The EARL of KELLIE to Mr STUART.

*(Produced with Defences for Mr Stuart.)*

My Dear Sir,

*London, 1st December 1819.*

Permit me to tell you, that it gives me great pleasure to understand that you and Lord Morton have shaken hands, so that all unpleasant bygones will be forgot, and that you are to take your proper situation in our Yeomanry. Tho' you and I differ somewhat in politics, yet I am sure we will never differ in matters that regard the good of our county, and, I may say, of the country at large. Believe me, with much esteem,

My Dear Sir,

Yours, most obediently,

KELLIE.

#### No. V.

EXTRACT from an Article in the *First Number* of the *Glasgow Sentinel*, entitled, "Mr JAMES STUART and the LORD ADVOCATE."

Our readers will recollect that we sometime ago introduced Mr Stuart to their notice, on the occasion of his mean and unmanly attack on Mr Stevenson. They are perfectly

aware that the subject matter of Mr Stuart's complaint against that gentleman was the appearance of a paragraph in the *Beacon* newspaper, which no man who read it could conceive either to be immoderate or untrue. At the time of her late Majesty's threat to visit the Scottish metropolis, that publication, in descanting on the characters of the persons most likely to welcome her, stated that they (the conductors of the *Beacon*) *did not think that any one above the rank of Mr James Stuart would desire to be presented to her, or words to that effect.* It is true that the allusion to Mr Stuart's rank, which he is very anxious to talk about on all occasions, is highly ironical : but surely there is nothing in it wonderfully offensive. Be that as it may, the fine feelings of the descendant of the Stuarts could not withstand it. He waited on Mr Stevenson, the supposed editor of the paper, remonstrated with him, and ultimately launched forth into a correspondence on the subject, in which, every body knows, Mr Stevenson conducted himself like a man of sense and delicacy, and Mr Stuart in a manner rude and every way unhandsome. The sequel of his behaviour confirmed this. He attacks Mr Stevenson in the streets of Edinburgh, in the most brutal manner, and attempts to belabour him with a horse whip, while his own servants, brought from Fife for the express purpose, were employed to hold Mr Stevenson's hands from any retaliation. It is needless to offer any proof of these facts : they are perfectly notorious, and reluctantly admitted by the aggressor himself.

What did Mr Stevenson do to take amends for this gross outrage on his person ? Just what any gentleman of his respectability should have done, and what no person of the least claim to the character of a gentleman could have avoided. He sought satisfaction from his antagonist. But, oh shame to the dishonoured blood of the house and name of Stuart, he with a meanness only discernible in low life, and in humble society, sought his personal safety in the most glaring cowardice ! The blustering and the passionate are always in the rear of danger. James Stuart was consequently posted as a coward and a poltroon. The very rabble and oyster-women on the streets of Edinburgh read the label, mused upon the circumstances, and blushed for their *patriot*.

We are not the advocates of duelling : God forbid. We would not stain our hands nor our consciences by any participation in its murderous subterfuges. But if ever there was a case that called loudly for satisfaction, it was the case of Stevenson. And yet it was scarcely worth his pains.—When

the heartless ruffian seeks for revenge, for ideal injury, by plying his minions to hold the arms of the person he abuses, we would consider him utterly undeserving of the satisfaction of a gentleman, and we would desire to hold him up to the unalloyed opprobrium of mankind.

Whether the *Beacon* indulged in a superabundant quantity of personal hostility towards Mr Stuart, subsequently to his affray with Mr Stevenson, we shall leave the world to determine. But this we will observe, that, from the way in which Mr Stuart conducted himself, he could not have been too severely exposed. The man who acts unmanly—the *patriot* who degrades himself like a traitor—the bullying bravado who is ever the tyrant in a place of safety, must lay his account to meet the hisses of society. The *Beacon* may possibly have o'erstepped the line of propriety on other subjects, and we do not defend it. It may have used a vulgar sentence where the satire of an elegant one might have been felt more poignantly; but in this case its personality was justifiable—its warmth and violence were excusable.

## No. VI.

EXTRACTS from the *Answers* for ROBERT ALEXANDER and WILLIAM BORTHWICK, Printers in Glasgow, to the *Condescendence* for JAMES STUART, Esq. in the Action of Damages at his Instance against them.

—“The Respondents generally deny the truth of the libel. They affirm, that the statements in the newspaper complained of are true.”—

—“The Respondents offer to prove, by the evidence of persons of high character and skill in the laws and practice of honour, that the conduct of the pursuer, in regard to the affair with Mr Stevenson, was most ungentlemanly, and deserving of every condemnation.

*In respect whereof, &c.*

(Signed) For Mr D. M'NEILL,

JOHN HOPE.”



## No. VII.

LETTER "To the EDITOR of the SENTINEL," dated 25th January 1822, signed MARK TOD.

(From the Glasgow Sentinel, Wednesday, January 30, 1822.)

Sir,

The Whig Festival and Radical Rally took place here last night, no less a person than "the conquering hero," Sir Ronald Ferguson, M. P. for Kirkaldy, in the chair. They told me, that about 260 gentlemen sat down to dinner, but I presume they were counted near the witching hour of night, when two eyes are as good as four. Amongst the GENTLEMEN, however, I remarked your peculiar friend, the magnanimous Mr James Stuart, but it was not HE who gave "the Liberty of the Press." The rest of the GENTLEMEN were, in general, decently clothed; which, when I had time to observe it, dissipated the alarm and suspicion with which I pressed through the crowd, one hand on my watch chain and the other on my pocket, repenting most heartily of my idle curiosity.

The GALLANT GENERAL, as they called him, first, very modestly expressed his inability to perform that duty which he had DELIBERATELY undertaken, or "to do justice to the situation in which he FOUND himself placed;" but this unlucky DISCOVERY did not PUT HIM OUT of the chair, or his speech, for in an EXTEMPORARY oration, he recommended UNION to prevent ruin, but amongst WHOM I could not learn. A very shrewd dark-looking man significantly hinted, that it was a guarded allusion to UNITED SCOTSMEN. Sir Ronald, however, concluded by giving very decently, without any wink or other indication, "The King." After a toast or two, "THE CONQUERING CHAIRMAN" next proceeded to eulogise the public principles and PRIVATE CHARACTER of Mr Fox; the latter, at least, I thought rather ticklish ground, but the Whigs cheered, and all was right, for I am no connoisseur in Whig morality; so "The memory of Charles James Fox" was ordered to be washed down in solemn silence: "Little said soonest mended," (thought I,) and swallowed my wine. I forgot, however, to mention, that the Conquering General, not finding enough, I fancy, to say for the old dead Whig, jumbled in some devilish severe hits against the present ministers, and told us that HE (the Conqueror) CONDEMNED THEM. So all is over with THEM.

THE GALLANT CONQUEROR next touched up Parliamentary Representation pretty sharply, but made no allusion to KIRKALDY, which you will admit was handsome on his part. He then gave, (and he spoke English like any cockney who has lived in London all his life,) "A fair, free, and fool representation in Parliament," and the fiddles struck up "Tullochgorum." THE CONQUERING GENERAL AND GALLANT CHAIRMAN concluded what he FOUND to be his allotted portion of the toasts, by giving the health of one on whom the country should turn THEIR eyes in the hour of DANGER, "Earl Grey;" and the waggish cat-gut tormentors struck up the PRETENDER's song of "Charlie is my Darling." I thought this Noble Lord had become quiet, but after this hint we must keep a sharp eye upon him.

Down sat the REVIEWING General, and up rose the REVIEWING Lord Rector, Mr Jeffrey, who in more words than a less glib gentleman could have pressed into the service on such a subject, gave "Sir Ronald Ferguson," and the Band, as previously instructed, played "THE CONQUERING HERO!" The Conquering Hero returned unblushing thanks, and with a BATTLE-dore report, sent back the compliment by proposing the health of "Our EXCELLENT CROUPIER, Mr Jeffrey." (Great Applause.) The Croupier's croup was in excellent motion, and he was up in a moment, and was all modesty and gratitude.

Then we had, in strange succession, toasts, and speeches, and healths, and memories, too many to remember, till the dull series was relieved by a speech from Mr Cranstoun, which I regret he did not deliver in Greek, as was originally intended. It would have been more appropriate to Grecian liberty than a harangue upon MODERN Greeks in a modern language. I don't think he alluded to the number of SLAVES in ancient Athens, but that perhaps was properly omitted; he concluded, by giving, for a toast, "The re-establishment of the independence of Greece;" this was most heroically received, but passed without a Tune, as the fiddlers had no Greek music furnished;—ONE of them, who is celebrated for the faculty of PUNNING with his fiddlestick, and who slyly coupled Earl Grey with the Pretender, proposed to play the tallow chandler's song, "On melting day when grease is boiling," but it was deemed PERSONAL to several respected Whigs, and an extinguisher was put upon what Tom Moore calls "the LIGHT of the song."

Charles Fox's name and memory is a very convenient excuse for all subjects whatsoever; and as all Whigs are men

of TALENT, we had, as one Doctor MacLagan, who sat near me, very aptly observed, a very copious discharge of oratory. My next neighbour, on the right, whom I suspected to be a weaver, from the manner he expressed his joy, by the alternate fling of either arm, and the successive kicks with either heel, assured me that there were three DOZEN of prime toasts given, and short, and long, five DOZEN of speeches. Many of the toasts you will see in the papers. The army and navy were given, but not another FIGHTING man (unless you will allow the Director of Chancery, my Lord Rosslyn, who was remembered when toasts began to run dry,) until the gallant and "excellent Croupier," whom Lord Byron has celebrated for some bold exploit with Anacreon Moore, (the seconds, no doubt, singing the beautiful air of "Fly not yet,") arose and gave the health of Mr JAMES STUART! Mr James acknowledged, in grateful terms, the honour which he had RECEIVED from such a quarter. So now he has a FEATHER to stick in his cap, to bear the other company.

Imagine my gratification to be seated at so small an expence, at an elegant dinner, amidst a galaxy of talent; and my mouth scarcely well closed upon my morsel of cheese, again wide expanded for a MORCEAU of eloquence. After all, although I am no judge, I think these MEN OF TALENT very middling sort of bodies. It is not, perhaps, becoming in one such as me to doubt the assurances which we have from THEMSELVES. But if you could convince me that they may possibly be mistaken; and, if thus relieved from the WEIGHT of SUCH authority, I am asked my opinion, why, I must give it honestly, and say that I never was present at such a scene of humbug, fulsome flattery, and foul vituperation, in the whole course of my life. Such an olio of vulgarity and impertinence, with an occasional pepper-corn of genius, I have never before been partaker of. Low must that party be sunk, that could not meet under more respectable auspices than Sir RONALD FERGUSON; and where such a SET were permitted to be prominent. Talents! "behold there arose a talent of LEAD." There are a few men of commonplace genius amongst them, there are also a few smart men of literary SLANG. But duller fellows than the bulk of those who had the effrontery to presume to talk, must alone be sought for amidst the swamps of Old Batavia.

I am, Sir, your obedient humble servant,

MARK TOD.



## No. VIII.

## THE LATE LIEUTENANT JAMES STUART.

(From the Glasgow Sentinel, Wednesday, Feb. 20, 1822.)

To be dragged into a contest with any individual is an evil; but the evil is aggravated when the opponent is one not in the most blooming estimation. This we advance as a general principle. We now freely and ingenuously confess our error, in having repeated, in our columns, any thing regarding Mr James Stuart; for had the gift of prophetic anticipation been ours, and could we have foreseen all that the gentleman has done for himself, we should have left his conduct to himself as the more successful satirist.

This *man of letters* has printed a pamphlet, from which any one who will accept of it *gratis* may learn that James Stuart was actually enrolled as a *fighting* man, in the western troop of Fifeshire Yeomanry Cavalry. It appears that this *heroic* Lieutenant, contrary to a Regimental Order, *called out* the troop in which he serves for a drill and a jollification at the Stuart's arms. The Commanding Officer reported this violation of discipline to the Lord Lieutenant, who directed that he should be reprehended in orders, and these orders to be read at the head of every troop. The Lieutenant rides straight from a drill, writes to the Commanding Officer, and tells him that his fingers are *cold*, (doubtless to convince him of the *coolness* with which he wrote,) and overwhelms him with compound misfortune; for he tenders his resignation, and warns him that he will no longer *mount a Trumpeter*. The resignation is *immediately* accepted. So much for the *Lieutenant* himself; but the *Trumpeter* is not yet disposed of.

The magnanimous yeoman has a threefold defence. The Captain's sickness, his own ignorance, and his exemplary conduct on the day *libelled*; for he states—and we believe him—that he was the *last* man to *retreat* from the Stuart's arms. Brother M'Culloch is a political economist, and we understand has *two* pupils, and he will bear us out in the assertion that every *thing* will find its own level. To raise the value of any *thing* by any *act* is hopeless. Hence the attempt of Lord Rector Jeffrey to give a *lift* to Mr James Stuart at the Fox dinner, was defeated by the laws of gravity; he might with equal success have exerted his puissant powers to *lift* the celebrated fat ox of Duncarn.

We noticed Mr James Stuart as an active, every-where-busy, bustling Whig ;—as a *publicised* character who courted notice. It was under error that we noticed him at all, and we repeat our avowal of regret.

## No. IX.

LETTER—SIR ALEXANDER BOSWELL, Bart. to ROBERT MACONOCHE, Esq.

*Edinburgh, 24th March 1822.*

My Dear Maconochie,

I received your very kind note, but I was so worn out, and just setting out, that I could not come to see you, and it was too late to appoint you to come to me.

I must now address you on a subject of a delicate nature, which I do from a confidence in your friendship.

About ten days ago Mr Stuart of Dunearn went to Glasgow, and, by the instrumentality of certain persons, one formerly a partner in the Clydesdale Journal, (now the Sentinel,) broke open the editor's desk and carried off his papers, and, I understand, amongst others, some squibs in my handwriting. Last night, on my arrival, I received a letter from Lord Rosslyn, that he wished me to appoint an hour as early as possible, that he might make a communication to me ; this, I suppose, is in reference to some of these squibs. I do not know who the offended party may be, but even if it should be Mr James Stuart himself, I shall give him a meeting. In order, however, to obviate many of those circumstances which follow such transactions, I mean that the meeting shall take place on the Continent,—say Calais ; and I wish to put your friendship so far to the test, as to request you to be my friend on this occasion. I saw your brother this morning,—and his Lordship seemed to think that you would acquiesce. \* If I had deemed it expedient to meet my man here, John Douglas would have gone out with me ; but, if I should be the successful shot, I should not like the after proceedings of our Courts of Law, and therefore wish to pass beyond their jurisdiction. I know nothing of particulars yet, but write in pru-

\* It has occurred as proper to be explained here, that, in that part of his speech which refers to this letter, Mr Cockburn did not profess to quote its *words*, but only to give its substance ; and, therefore, that the passage printed in Italics, on p. 41, should not have been marked as a quotation.

dent anticipation, and shall write again so soon as I know them.

I know this is perhaps the greatest favour that can be asked of any man, but, by this arrangement, you will be implicated in less trouble, and you won't mind a trip to France. If my wish is acceded to, I would propose the meeting to take place about fifteen days hence, as I wish to make a slight arrangement respecting my estate, and legalize it by going to kirk and market, so that you may write on receipt of this, and if I must go sooner than I can receive yours, it is only a letter thrown away.

I am,

Dear Maconochie,

Your's very faithfully,

(Signed) ALEXANDER BOSWELL.

*Edinburgh, 7th June 1822.*—This is the Letter referred to in my deposition of this date. \*

(Signed)

J. BALFOUR.

AND. MURRAY, *Comr.*

WM. S. FRASER, *Clerk.*

(Addressed thus on the envelope :)

*Edinburgh, March Twenty-four 1822.*

*Robert Maconochie, Esq.*

*52, George Street,*

*Portman Square,*

*London.*

*J. P. Grant.*

Delivered into my hands by Robert Maconochie, Esq. this fourteenth day of May 1822.

(Signed) J. BALFOUR.

*Edinburgh, 7th June 1822.*—This is the cover of the Letter referred to in my deposition of this date.

(Signed)

J. BALFOUR.

AND. MURRAY, *Comr.*

WM. S. FRASER, *Clerk.*

\* See Trial, p. 19.



No. X.

EXTRACT LETTER—Mr STUART to JAMES GIBSON,  
Esq.*Prince's Court, London,  
Thursday, March 28, half-past 4, P.M.*

My Dear Sir,

I am at the Parliament Street Hotel, but be so good as to address *here*. Let me know what is said, however bad they may represent me. I would, if the worst has happened, avoid wounding the feelings of those that remain, by allusions in the Papers to the cause of the meeting. The trial will develop the truth; but if Sir Alexander recover, as I trust he will, you know the facts; and I trust to you and ——— doing what is fit. I would, however, do nothing while Lord Rosslyn is in Scotland, without his sanction. My debt to him can never be paid.

I hope you remembered to retain Messrs Jeffrey, Moncreiff, Cockburn, and that, if the worst has happened, notice should be given of my determination to stand trial on the *earliest occasion*.—

No. XI.

LETTER Mr STUART to Mr GIBSON.

*Hotel de Londres, Place Vendome,  
Paris, April 5, 1822.*

My Dear Sir,

It would only annoy you to tell you how sincerely I am obliged by your kindness in writing to Mr Campbell. I am really so distressed to-day as to be almost incapacitated for any thing, and did not intend to send you a line, but to refer you to ———. But I am so anxious that a trial should be insisted on, as necessary to exculpate me *with all*, that I wish you to consider well what steps ought to be taken. The whole accounts I have seen are erroneous; and even those favourable to me, or intended to be so, give not the half of my case. It is impossible, after the event which has happened,

to write a word on the subject ; and I know of no way of accomplishing an object so necessary for me, but by judicial investigation. I thought a trial would *necessarily* follow, but I learn from Mr Clerk that it is not so. Write to Mr Campbell's care. I have begged to be allowed to return to London ; for it is impossible for me to enjoy anything here, although all are most kind, especially ————, who has made me feel as if I was in my own house.

I am,

My Dear Sir,

Yours, most faithfully,

JA. STUART.

## No. XII.

**COPY NOTE** from Mr STUART to his Excellency the Right Honourable Sir CHARLES STUART.

Mr Stuart presents his compliments to Sir Charles Stuart, and begs leave to acquaint his Excellency, that, with a view to his having more ready communication with his legal friends in Britain, he intends to-morrow to set out for Calais, to the Hotel de Meurice.

If he does not afterwards proceed directly to Britain, he will take the liberty of informing his Excellency where he is to be found while he remains in France. Notice was instantly given in the proper official quarter, on Mr Stuart's leaving Scotland, of his readiness to surrender on the day of trial ; his only object in leaving Britain being, if possible, to avoid the previous confinement.

Mr Stuart embraces this opportunity of offering his grateful acknowledgments to Sir Charles Stuart for having allowed him the honour of an interview.

*Hotel de Londres, Place Vendome,  
Wednesday, April 17, 1822.*

## No. XIII.

## LIST of WITNESSES cited on the part of the Pannel.

- 1 The Right Honourable James Earl of Rosslyn.
- 2 The Honourable William Erskine, Lord Kinnedder.
- 3 Roger Aytoun, Esq. of Muriston, writer to the Signet.
- 4 Richard Mackenzie, Esq. of Dolphington, writer to the Signet.
- 5 Dr James Robertson Barclay of Keavil.
- 6 John Douglas, Esq. of Lockerby, one of the Commissioners of Excise for Scotland.
- 7 Arthur Campbell, Esq. writer to the Signet.
- 8 James Gibson, Esq. of Ingliston, writer to the Signet.
- 9 Mr William Henderson, writer, Hamilton.
- 10 Mr William Spalding, writer, Pitt Street.
- 11 Mr Felix Dougherty, now or lately clerk to the said William Henderson.
- 12 Loudon Robertson, journeyman printer, lately in Glasgow, now in Dundee.
- 13 William Blair, Esq. of Blair, Ayrshire.
- 14 Francis Walker, Esq. of East Fortune, writer to the Signet.
- 15 William Horne, Esq. Sheriff-depute of the shire of Haddington.
- 16 Hay Donaldson, Esq. writer to the Signet.
- 17 Walter Cook, Esq. writer to the Signet.
- 18 Adam Duff, Esq. Sheriff-depute of Edinburghshire.
- 19 Dr Andrew Coventry, Professor of Agriculture in the University of Edinburgh.
- 20 William Gulland, Esq. Strypeside, Fifeshire.
- 21 James Nairne, Esq. of Claremont, writer to the Signet.
- 22 Alexander Hunter, Esq. writer to the Signet.
- 23 Robert Maconochie, Esq. son of the late Lord Meadowbank.
- 24 Robert Liston, Esq. surgeon, George Street, Edinburgh.
- 25 William Smith, servant to James Stuart, Esq. younger of Dunearn.
- 26 Thomas Allan, Esq. banker in Edinburgh.
- 27 Dr George Wood, surgeon in Edinburgh.
- 28 Adam Rolland, Esq. writer to the Signet.
- 29 George Bruce, sheriff-officer in Edinburgh.
- 30 William Ritchie, Esq. solicitor of the Supreme Courts in Edinburgh.



- 31 Charles Dalrymple Gairdner, Esq. manager of Hunter and Company's bank, Kilmarnock.
- 32 David Erskine, Esq. of Cardross.
- 33 Thomas Horsbrugh, Esq. of Lathockar, Fifeshire.
- 34 Walter Fergus, Esq. of Strathore, by Kirkaldy.
- 35 Alexander Ure, writer in Glasgow.
- 36 John Galloway, clerk to the said Alexander Ure.
- 37 William Bankhead, clerk also to the said Alexander Ure.
- 38 John Fisher, extractor in the Burgh Court of Glasgow.
- 39 William Lawrie, writer in Glasgow.
- 40 John Clerk, Esq. of Eldin, Advocate.
- 41 William Murray Borthwick, late printer in Glasgow.
- 42 Alexander M'Grigor, Esq. writer in Glasgow.

*Lastly*—The whole of the witnesses (except Miss Boswell) named and designed in the list for the Crown, annexed to the indictment, who are not named in this list, and who are here held as repeated.

#### No. XIV.

**INTERLOCUTOR of RELEVANCY**, remitting the Libel and the Pannel to an Assize.

[Omitted to be inserted at p. 44.]

The Lord Justice-Clerk and Lords Commissioners of Justiciary, having considered the indictment at the instance of his Majesty's Advocate for his Majesty's interest, against James Stuart, pannel, find the same relevant to infer the pains of law, excepting in so far as it charges the pannel with the unlawful design of challenging others of the lieges to fight a duel or duels; allow the pannel a proof in exculpation and alleviation; and remit him, with the indictment, as found relevant, to the knowledge of an assize.

(Signed) D. BOYLE, I. P. D.

3985064

REPORT  
OF THE  
TRIAL BY JURY

OF THE  
Action of Damages

FOR A LIBEL IN THE BEACON NEWSPAPER;

LORD ARCHIBALD HAMILTON,

AGAINST

DUNCAN STEVENSON,

*PRINTER IN EDINBURGH.*

---

*Taken in Short-Hand.*

---

EDINBURGH:  
PRINTED FOR JOHN ROBERTSON,  
132. HIGH-STREET.

---

1822.





## REPORT, &c.

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It is said by Mr Erskine, our great institutional writer, in treating of the criminal law of Scotland, regarding injuries done to the person, whether real or verbal,—“ Scandal, reduced into writing, and published, may be considered rather as a real than a verbal injury, and, because of all others it is the most public and permanent, it ought to be punished by the Judge with greater severity than the slighter injuries.” Ersk. B. iv. tit. iv. § 81.

Though the trial of such cases is, by the law of Scotland, competent to the Judges of the Court of Justiciary, at the instance, or with the concurrence of the Lord Advocate, as the public prosecutor, and also to the Judges of the Commissary or Supreme Consistorial Court, yet, on account of the difficulties and niceties in point of form attending a trial in the Justiciary Court, and there being no trial *by Jury* in the Commissary or Consistorial Court, the practice, of late years, has universally obtained, of bringing such causes before the Court of Session for trial; and where the conclusions of the action are for *damages* and *expenses* only, such action is, by a late statute, 59. Geo. III. cap. 35. directed to be remitted forthwith to the Jury Court in civil causes, for trial upon issues, to be settled and adjusted in that Court in the manner prescribed by the Act.

The present is one of those cases, concluding for damages and expenses only, and the “summons,” (which is a writ flowing in name of his Majesty) is in the following terms:—

*SUMMONS, the Right Honourable Lord ARCHIBALD HAMILTON, and ALEXANDER YOUNG and ROGER AYTOUN, W.S.S. his Mandatories; against DUNCAN STEVENSON, Printer, Parliament-stairs, Edinburgh.*

GEORGE, &c.—WHEREAS it is humbly meant and shewn to us, by the Right Hon. Archibald Hamilton, commonly called Lord Archibald Hamilton, second son of the late Archibald Duke of Hamilton and Brandon, and representative in Parliament for the shire of Lanark, and Alexander Young and Roger Aytoun, writers to the signet, his mandatories, That Duncan Stevenson, printer, Parliament-stairs, Edinburgh, having within a short period, by himself, or by the aid and instigation of others, printed and published weekly a certain newspaper, or periodical work, called “The Beacon,” and the said Duncan Stevenson himself, or those to whose purposes he lends himself, and for whom he is responsible, having conceived a groundless malice and ill-will towards the pursuer, and having formed a premeditated design of traducing the character of the said pursuer, and endeavouring to bring him into general odium and contempt, the said Duncan Stevenson, or others employed by, or employing him, did, on the 21st day of April last, 1821, print and publish a certain paper, described as Number 16. of the said newspaper or work called “The Beacon,” and did therein insert the following “letter,” or pretended letter, entitled “Burgh Reform,” addressed “To the Editor of the Beacon:”—“Crail, 19th April 1821. Sir,—Like many other places, this ancient burgh has been much infested of late with what is called the spirit of reform, that is, with the spirit of idleness, presumption, and discontent. I don’t suppose that our reformers are worse than the common run of the fraternity, but they are certainly quite bad enough to account for all the ridicule into which their schemes have fallen. Among us, indeed, a reformer is merely a person who is fit for nothing else; for every blockhead who is too stupid, or too lazy, to thrive as a tailor or shoemaker, forthwith imagines that the fault lies with the magistrates, or the government, and that matters

cannot possibly be set right unless he tries his hand at politics. I verily believe, however, that we should have much less of this nonsense, and that most people would be easily laughed out of it, if it were not for the countenance which it receives from above stairs. Not to go farther, only look to the conduct of Lord Archibald Hamilton, who has been working for years past at this kind of mischief. I don't know what has been his success elsewhere, but I'm sure that in Crail he and his understrappers have caused more harm than ten bad fishing seasons could have done. This Noble Lord calls himself a friend to the happiness of the lower orders. And how does he promote their happiness? Why, by trying to place them at variance with their rulers, and leading them to think of his absurd plans, and of their own imaginary grievances, instead of their useful and honest occupations! The reformers here have even been encouraged to adventure on the dangerous use of pen and ink in his service, and to correspond with him with regard to the affairs of the burgh. The person who generally communicates with Lord Archibald is one David Walker, the convener of the trades; though it may be supposed that he sometimes avails himself of the epistolary talents of his friends. This David is a person of great authority among our reformers; indeed he may fairly be said to be the James Gibson of the place. He has long been an object of great alarm to his opponents in the burgh; and I believe few even of his friends approach him without a certain degree of awe. This has been particularly the case since his correspondence with Lord Archibald, for he now thinks himself entitled to maintain as stately an air, and to look as sour and sulky as the best Whig among them. Of course, Lord Archibald's answers to the letters which are sent to him from this respectable quarter, are generally quite in the common cant which is used on such occasions. They contain a great deal about 'indefeasible privileges,' and 'imprescriptible rights,' and 'the Revolution of 1688,' and 'the enlightened Burgesses of Crail;' and generally very little that any one here can understand. But they have their effect; for the people are delighted with being noticed in these fine words, and the cause of reform has



certainly derived a considerable increase both of numbers and importance from this circumstance. To give you some idea of Lord Archibald's correspondents, I inclose a fac simile of one of David's letters, which I got hold of before it left this, and copied by the new lithographic method. I do not pretend to be able to decypher every part of it, but I pledge myself for its accurate resemblance to the original. If this should be doubted, it is in your power to verify it, by appealing either to Lord Archibald or to David himself. I am, Sir, yours, &c. J. C." "P. S.—I hope to be soon able to send you one of Lord Archibald's answers, especially as their peculiarities can be shewn without the trouble of a lithographic process." Then follows a letter, signed David Walker, convener, and addressed to Lord A. Hamilton, London; and in the comments upon this letter, in the same newspaper, there is inserted this passage: "But it surely ought to be a matter of the deepest self-reproach to Lord Archibald Hamilton, that he has led such persons into this mischievous and extravagant folly. If his Lordship likes to waste his *own* time on burgh reform, let him do so, and he will only be laughed at for his pains; but when he leads men like David Walker to fool away *their* time in such nonsense, he deserves much severer treatment." That in farther prosecution of the said malicious design, the said Duncan Stevenson did print and publish another number of the said newspaper, entitled "The Beacon," No. 18. and bearing date "Edinburgh, Saturday, May 5. 1821," in which there occurs the following passage, entitled, "Lord A. Hamilton's Correspondents."—"The following letter on this subject is from a most respectable quarter, and we can pledge ourselves for the perfect accuracy of its contents."—"To the Editor of the Beacon. Sir, I concur in opinion with you, that the correspondence between Lord Archibald Hamilton and David Walker of Crail, part of which appeared in your paper, No. 16. does but little credit to either of these parties. David would do more good to himself, and to the burgh of Crail, were he to sit at his loom, or whatever be his occupation, than he can do by setting his neighbour burgesses and himself agog about the 'seat' of the burgh, or any other subject he so

imperfectly understands ; and they are by no means David's best friends who encourage him in such fooleries. It might be expected, that the son of the first Peer of Scotland, whose family, only a few generations past, had but one feeble life between them and the Crown, and who represents the most populous county in Scotland, would not so far forget his high birth, and lay aside his family pride, as to correspond with a prattling presumptuous tradesman, so ignorant and illiterate as this convener of Crail evidently appears. But that is not the only instance in which the noble Lord has corresponded with people of low character on political subjects. When his Lordship, and other of the opposition members, were endeavouring to acquire popularity by opposing the corn laws, and when James Wilson, then hosier in Strathaven, who was lately executed at Glasgow for treason, was at the head of a mob of the lowest people in that town, burning the effigies of Lord Castlereagh, and others who differed in opinion from the opposers of these laws, Lord Archibald Hamilton corresponded with Wilson on that subject, though he was then under prosecution at the instance of the Hamilton family for poaching their game. Wilson showed his Lordship's letters, and read them to crowds on the street ; and some of these letters were found by the Sheriff-substitute when he searched Wilson's repositories, after he was committed for treason, and I believe they can still be seen in the hands of his widow. This to me seems more improper than even corresponding with David, who holds a sort of office in the burgh of Crail, and who seems to be eagerly looking forward to the 'seat' of the magistracy ; whereas James Wilson never held a higher office than preses, or leader, or agitator of the merest rabble in a manufacturing town, about the corn laws, the proceedings of Colonel Wardle, or whatever at the time served to inflame the lower orders ; and as he lived on domains of the Hamilton family, and had often invaded their game, the noble Lord must (or might) have known him better than he probably did David of Crail. But his Lordship, and others of his political party, seem willing to open a correspondence with any person who can be prevailed upon to enter into their measures, and to facilitate the views of their

party. If David, or Wilson, or any such people, were to presume to write his Lordship on any other subject than politics, they would not be so readily attended to.— I have known other instances of that noble Lord corresponding with people of a suspicious cast on political subjects. A few years ago a man of doubtful character advertised a course of political lectures in Hamilton. The Magistrates called him before them, and prohibited him from lecturing within the burgh. In a few days afterwards, his Lordship wrote from London to the factor at Hamilton Palace, to enquire at the Magistrates on what account they had presumed to interrupt this political lecturer. The Magistrates pled, that it was because that itinerant had advertised his lecture before asking their liberty to do so; and they were not put to farther trouble on the subject. But when this lecturer, and James Wilson, and their followers, began in 1819 to talk of dividing large estates, and some of their wives, who were far advanced in pregnancy, boasted that they would lie in, in course of a few weeks, in the palace of Hamilton, the noble family became more alive to their danger, and instructed their factor and the local magistracy to raise and collect a force to protect the palace, and preserve the peace of the county. I am, &c. T. S. *Clydesdale*, May 1st 1821.” That in the same Number last mentioned of the said newspaper, the said Duncan Stevenson, of himself, or by the instigation aforesaid, did proceed more directly and positively to develop the malicious design from which all the statements had proceeded, in the following most false and calumnious charges against the said pursuer: “ We observe, from the report of the proceedings on Wednesday, that Lord Archibald Hamilton, in the dearth of subjects of political interest, has procured (from a person of the name of Turner) a petition, complaining of the arbitrary conduct of the Lord Advocate. It seems that this man was apprehended, and imprisoned for a week, as a suspected person last year, during the disturbances in the west country, and he now applies for compensation on account of the injury which his character has sustained. The means by which he has been induced to do this are, no doubt, quite worthy of the noble correspondent of the Crail Radicals and Straths-



aven Traitors." And the above comments conclude thus : " On this occasion Lord Archibald Hamilton has really chosen his ground singularly ill ; and in doing so, has shewn either the most lamentable ignorance of the public opinion, or the most extraordinary contempt of it. He ought to know, that the conduct of the Lord Advocate at the time he alludes to, was such as has ensured the lasting gratitude of the country, and that it has never been called in question except by the patrons or associates of crimes which could not have been speedily subdued, except by the most remarkable union of firmness and lenity." That not satisfied with these false and infamous calumnies against the said pursuer, the said Duncan Stevenson did print and publish another Number of the said newspaper called " The Beacon," No. 19. and dated " Edinburgh, Saturday, May 12. 1821," and did insert, or cause to be inserted therein, the following passages : " The Lord Advocate and Lord Archibald Hamilton.—We have not for a long time observed any thing more malicious and stupid than the petition presented by Lord A. Hamilton to the House of Commons, in name of James Turner, who was confined for a few days during last spring upon a charge of high treason. Every one knows how these petitions are got up ; we shall not therefore insult our readers by an attempt to prove what all of them must know well enough,—that this is in truth the complaint of Lord A. Hamilton himself. This noble person is already well known as one of the drudges of the Whig faction,—as the patron of burgh reform, and in that character the honoured correspondent of David Walker of the royal burgh of Crail, of whose power of spelling and composition we lately gave a striking example. But we could not have supposed the noble Lord capable of going this length, or of so far degrading himself as to become the Patron also of suspected patriots." That a remonstrance having been made to the said Duncan Stevenson on account of these malicious and continued libels on the character of the pursuer, the said Duncan Stevenson, instead of disclosing the author or authors thereof, or offering any apology, contradiction, or satisfaction concerning them, did thereafter print and publish another Number of the said newspaper call-

ed "The Beacon," No. 22. dated "Edinburgh, June 2. 1821," in which there are the following passages: "Lord Archibald Hamilton v. The Beacon. Our Readers must have observed, that we have thought it necessary to comment occasionally on the conduct of Lord Archibald Hamilton, and to examine into the real nature of his political character and pretensions. Every one will allow, that if it is right that public men should be subjected to such an operation at all, this noble Lord is one of the fittest subjects for it. He has been unceasing in his endeavours to bring himself into notice, and certainly not at all scrupulous as to the means of doing so." That one and all of the above statements are false, malicious, injurious, and calumnious, and have been composed by the said Duncan Stevenson, or others by whose aid and instigation he acts, to whose purposes he lends himself, and for whom he is responsible, and have been printed and published by him, the said Duncan Stevenson, in the said newspaper called "The Beacon," wantonly, and maliciously, and avowedly, and intentionally, for the purpose of holding up the pursuer's conduct and character to discredit and contempt, and of bringing his loyalty and attachment to Us, and to the Constitution of these realms, into doubt and question: That this malicious and calumnious design appears in the numerous and wilfully false statements contained in the publications aforesaid, and in their whole scope and tendency: That the pursuer is represented as "the Correspondent of Crail Radicals," and "Strathaven Traitors,"—the said defender thereby meaning and intending that the pursuer was in correspondence with the persons thus referred to, in furtherance of their radical principles and treasonable designs: That he is represented as a worker of mischief, it being thereby evidently meant and intended that he is a worker of mischief to the Constitution and peace of the country: And, more particularly, the said pursuer is directly, but falsely and maliciously, accused of having "procured from a person of the name of Turner a petition complaining of the arbitrary conduct of the Lord Advocate;" which conduct of the Lord Advocate is thereafter stated never to have been called in question, "except by the patrons or associates of crimes

which could not have been speedily subdued except by the most remarkable union of firmness and lenity;" whereby the said pursuer is, in the most direct terms, held out to the public as the patron or associate of the crimes for which various individuals suffered the punishment of treason: That the whole and every part of the said publications are false, calumnious, and malicious, and evidently directed to the same object, of bringing the character of the pursuer into hatred and contempt; and that, by means thereof, the said Duncan Stevenson has maliciously, wantonly, and falsely traduced, defamed, and vilified the pursuer in his good name and reputation, and used every endeavour in his power to bring him into discredit and contempt, as well with Us as with the public at large, and with his constituents the freeholders of the county of Lanark; in consequence whereof the pursuer has suffered, or might have suffered materially in his character and reputation, and to his great patrimonial loss: And as thus traducing, defaming, and vilifying the pursuer in this most unjust, false, malicious, and calumnious manner, has proved, or might have proved detrimental to him, more especially as he is a person of rank, and in a situation of great public trust and confidence as representative in Parliament for the county of Lanark, he is therefore entitled to recover from the said Duncan Stevenson the most ample damages, in *solatium* and reparation of the great injury committed against him: And although the pursuer has often desired and required the said Duncan Stevenson, defender, to make satisfaction and reparation to him for the injury he has thus committed, Nevertheless he refuses, or at least postpones and delays so to do. Therefore the said Duncan Stevenson, defender, as the author, or at least the printer and publisher of the said newspaper, Ought and Should be Decerned and Ordained, by decree of the Lords of Our Council and Session, to make payment to the pursuer of the sum of L.5000 Sterling, in name of damages, for the gross injury he has already sustained, or might have sustained, in consequence of the wanton, malignant, unjust, and calumnious charges, insinuations, and aspersions thrown out against him, and printed and published in manner above-mentioned: And farther, the



said defender Ought and Should be Decerned and Ordained, by decree foresaid, to make payment to the pursuer of the sum of L.500 Sterling, or such other sum, more or less, as Our said Lords shall modify as the expense of process to follow hereon, over and above the expense of extracting the decree to be pronounced herein, conform to the laws and daily practice of Scotland used and observed in the like cases in all points, as is alleged. Our will is herefore, &c. Given under Our signet at Edinburgh, the 14th day of June, in the second year of Our reign, 1821.

This summons was served upon the defender, on the 14th of June 1821, and he was required to put in his defence within twenty-seven free days. That period, of course, did not elapse till the 11th of July following; and, as the Court rose on that day for the long vacation, the action was merely called in Court, and appearance made for the defender, who, profiting by the delay of all further procedure till November, printed and published in the next Number of the Beacon, the summons *ad longum*, with his own comments upon it, thus reiterating all the libellous and injurious matter it contained, and justifying the publication of it: a proceeding certainly of very questionable propriety, however advantageous it might have been to the sale of the newspaper, which the defendant endeavoured farther to promote, by intimating, that he would favour the public with additional strictures upon the conduct of the pursuer, Lord Archibald Hamilton, in every subsequent Number of his publication, until the meeting of the Court in November. The promise thus held out to the public, was literally made good, so long as the Beacon continued to be published; but, in consequence of the steps taken by Mr James Gibson, W. S. that journal was shortly afterwards given up; on which occasion, the following advertisement was inserted in the other newspapers published in Edinburgh:—

*From the Courant of September 27th.*

“ We are authorized to state, that on Wednesday the 19th instant a meeting was held of the Subscribers to a bond of credit for the Beacon Newspaper; when a resolution was adopted to withdraw the whole names from that bond; which resolution was, on Thursday the 20th, intimated to the Conductors of the Beacon, as also to the Bank, and that those subscribers were thus, after that date, no longer connected directly or indirectly with that paper.”

When the Court met in November, after the usual forms were gone through, the following defences were, of this date, (22d November 1821), lodged by Mr Stevenson.

*DEFENCES for DUNCAN STEVENSON, Printer in Edinburgh, against LORD ARCHIBALD HAMILTON, M. P.*

1. No mandate is produced.
2. The defender admits that he was printer and publisher of the newspaper called *The Beacon*, at the time the Nos. libelled on were published; but he denies that the passages founded on in the summons are fairly quoted from that newspaper.
3. The libel is irrelevant, and incompetent as laid. The passages founded on are not actionable; and the inferences deduced from them are unwarrantable and absurd.
4. The defender was never actuated by the motives imputed to him in the summons; in fact, he never saw the statements regarding the pursuer in the Nos. of *The Beacon* libelled on, previous to their publication. He, however, reserves his right to prove the truth of one and all of these statements, should that be necessary.

*Under protestation to add and eik.*

DUN. M'NEILL.

The cause came, in the course of the rolls, to be called before Lord Pitmilley, Ordinary, in the Outer-House, of this date, (30th November 1821), when the following procedure took place:—

Mr JAMES MONCRIEFF, for the pursuer, Lord Archibald Hamilton, stated—That this was an action of damages for a libel; and moved that it should be remitted to the Jury Court.\*

\* It may be proper here, to quote the terms of the Act of Parliament under which this motion was made.

By Act 59. George III. cap. 35. it is provided, sect. 1. “ That in all processes raised in the Outer-House of the Court of Session, by ordinary action, or otherwise, on account of injuries to the person, whether real or verbal, as assault or battery, libel or defamation; or on account of any injury to moveables, or to lands where the title is not in question, or on account of breach of promise of marriage, seduction, or adultery; or any action founded on delinquency, or *quasi* delinquency of any kind, where the conclusion shall be for damages and expenses only, the Lord Ordinary of the Outer-House, before whom such processes shall be enrolled, do remit, and is hereby authorized and required, after defences are lodged, to remit the whole process and productions forthwith to the Jury Court in civil causes; which last mentioned Court is authorized and required, according to rules and regulations which the said Court and the Court of Session are herein after empowered to make, to settle an issue or issues, and to try the same by a Jury, to be summoned and impanelled under the provisions now in force, or herein after enacted for that purpose.”

Sect. 2. “ And be it enacted, That if it shall appear to the parties, or either of them, that there is a question of law or relevancy, which ought to be decided previous to the remit of the cause to the Jury Court, it shall be competent for them to state the same orally to the Lord Ordinary, who, if he thinks fit, may give judgment *de plano*, or order pleadings on the alleged question of law or relevancy; and if he orders pleadings, then the case is to be proceeded in, according to the course of the Court of Session; and as soon as such question of law or relevancy shall be disposed of, if matters of fact remain to be proved, the whole process and productions in the case shall be forthwith remitted to the Jury Court for the purposes aforesaid.”

Sect. III. “ And be it further enacted, That it shall be competent for the Lord Ordinary, if it shall appear to him that there is no question of law or relevancy which ought to be decided previous to the remit of the cause to the Jury Court, forthwith to order such case to be remitted to the said Court, for the purposes aforesaid: Provided always, That it shall also be competent for the Lord Ordinary, if he sees cause, to reserve the alleged question of law for the consideration of the Court of Session, after the matters of fact shall have been found by a Jury; and in all such cases, the interlocutor of the Lord Ordinary, ordering the cause to be remitted to the Jury Court, whether with or without a reservation of the alleged question of law, shall not be subject to review by representation, petition, appeal to the House of Lords, or otherwise.”



Mr DUNCAN M'NEILL, for the defender, answered—That he considered his client had no great interest, and certainly he had no inclination, to oppose the remit to the Jury Court. He would be prepared there, as well as in the Court of Session, to justify himself, in publishing in the Beacon the paragraphs founded on in the summons as libellous; and although he could not but consider the present action as a very extraordinary one, especially originating in such a quarter, in as much as it was an evident attempt, on the part of the pursuer, to fetter the public discussion of the political conduct of public men; he felt confident he would be entitled to a verdict of acquittal should the case come before a Jury. He was persuaded, however, it would at once be dismissed by his Lordship, on the ground of its incompetency. It was not relevant to infer damages.—It was an action totally new, both in its shape and form, and was quite an anomaly in this Court.

The summons proceeded, on the assumption of a conspiracy against the pursuer—of the defender, and others, with whom he was connected, having conceived a groundless malice and ill-will towards the pursuer—and of having formed a premeditated design of traducing the character of the pursuer, and endeavouring to bring him into general odium and contempt. It then goes on to specify and allege certain circumstances of publication in the Beacon newspaper, as the overt acts on which the charge rests; and then to state, that, by means thereof, the defender had maliciously, wantonly, and falsely traduced, defamed, and vilified the pursuer in his good

Sect. 12. " And be it further enacted, by the authority aforesaid, That it shall be competent and lawful for the Jury Court, when it appears to the said Court, in the course of settling an issue or issues, or at any time before trial, in the cases remitted to them as aforesaid, that there is a question or questions of law or relevancy, which ought to be previously decided, to remit back the whole process and productions to the Division of the Court of Session, the Lord Ordinary, or Judge Admiral, who remitted the same to the Jury Court, that the question or questions of law or relevancy may be considered and determined there: Provided always, That it shall be lawful to the said Division, Lord Ordinary, or Judge Admiral, when matters of fact shall, after such consideration or determination, remain to be proved, again to remit the whole process and all the productions to the Jury Court, in order that an issue or issues may be prepared and tried as aforesaid."

name and reputation, and used every endeavour in his power to bring him into discredit and contempt, as well with his Majesty, as with the public at large, and with his constituents, the freeholders of the county of Lanark; and as thus traducing, defaming, and vilifying the pursuer, had proved, or might have proved, detrimental to him, more especially as he was a person of rank, and in a situation of great public trust and confidence, as representative in Parliament for the county of Lanark, it therefore concluded, that he was entitled to recover from the defender the most ample damages, *in solatium* and reparation of the great injury committed against him.

This was certainly a most extraordinary ground of lesion,—that the pursuer was a person holding a high official character. The converse of the proposition would be a more rational ground of damage. The pursuer, however, while he had chosen to make his rank and dignity, as representative in Parliament for the county of Lanark, a ground for increasing his claim of damages, had also chosen to style himself “The Right Honourable Archibald Hamilton, commonly called Lord Archibald Hamilton, second son of the late Archibald, Duke of Hamilton and Brandon.” If he really conceived that his rank and dignity entitled him to swell his grounds of damages, he no doubt had a right to state them; but he ought not to have assumed what did not belong to him, and certainly he had no right to the title of “Right Honourable.” When a party comes into Court, and chuses to say that he holds *a particular character*, which is here an *assumed character*, and claims damages for a libel, he should distinctly aver, that he has been injured *in that character*. Here there was a claim made for *damages*, while it was not alleged that damage *had been sustained*; for *reparation*, while he does not state that he has *suffered loss*. The statement in the summons was clearly not relevant to infer damages. It ought to have alleged damage, injury, or loss. But it does no such thing. He had looked in vain for such an allegation. It stated, in the outset, that a conspiracy had been formed against the pursuer; but no such thing was averred, as that this conspiracy had proved successful;—that the feelings, the character, or reputation of the pursuer had

suffered; or, that he had sustained any injury or patrimonial loss. The pursuer had so qualified his averment in his summons, as completely to throw out his case. He had stated in his summons, “in consequence whereof the pursuer has suffered, *or might have suffered*, materially in his character and reputation, and to his great patrimonial loss.” He submitted to the Lord Ordinary, that it was not competent to the pursuer to claim damages, unless he made a distinct allegation of injury and damages sustained. The charge made against the defender, was no less than a charge of *leasing-making*.\* It was said in this summons, “That one and all of the above statements are false, malicious, injurious, and calumnious, and have been composed by the said Duncan Stevenson, or others by whose aid and instigation he acts, to whose purposes he lends himself, and for whom he is responsible, and have been printed and published by himself, the said Duncan Stevenson, in the said newspaper called ‘The Beacon,’ wantonly and maliciously, and avowedly and intentionally for the purpose of holding up the pursuer’s conduct and character to discredit and contempt, and of bringing his loyalty and attachment to *us*, (his Majesty the King), and to the constitution of these realms, into doubt and question:—That this malicious and calumnious design appears in the numerous and wilfully false statements contained in the publications aforesaid, and in their whole scope and tendency,—‘and that he is a worker of mischief to the constitution and peace of the country.’”

Though it was, no doubt, competent to the pursuer to claim damages for such an offence, he, Mr M’Neill, submitted to the Lord Ordinary, that the pursuer must allege that he had *actually sustained damage*. But it was not so done here. If the charge had distinctly set forth that damage had been sustained, there would have been no difficulty in the case; but the statement in this sum-

\* “Verbal sedition, which, in our statutes, gets the name of leasing-making, is inferred from the uttering of words tending to sedition, or the breeding of hatred and discord between the King and his people. This crime is by the Act 1703, c. 4. declared punishable, either by imprisonment, fine, or banishment, at the discretion of the Judge.” Ersk. B. iv. tit. iv. § 29.



mons was no less than a charge of *lesion*, and yet the averment of the pursuer was not that he had suffered, but that he *might* have suffered injury; from which the plain inference was, that no injury had been sustained by him, and on the bare possibility that he might have suffered damage, he had founded the conclusions of his action. Though he, Mr M'Neill, admitted, that the pursuer was entitled to amend his libel, and set his charge to rights, he maintained, that he must distinctly aver that he had suffered injury or loss, otherwise no decree for damages could be pronounced.

On these grounds he submitted, that the action was irrelevant in its present shape, and that it must be held to be so until the pursuer took out of his summons the alternative he had noticed, and distinctly and pointedly averred, that he had been injured by the defender.

Mr MONCRIEFF replied,—That he and his brethren on that side of the bar, did not conceive that the argument of the defender's counsel deserved an answer; and they therefore left the case with the Lord Ordinary.

LORD PITMILLY said,—It did not appear to him that there was any thing in Mr M'Neill's objection. There was here a clear ground of action to infer damages, and parties would be heard in the Jury Court. The Judges in that Court might no doubt give a wrong direction to the Jury; and if they did so, the party might put in a bill of exceptions. The only question before him, at present, was,—Are there grounds of action to infer damages? He had no doubt that there were such, and *therefore he remitted the cause to the Jury Court.*

Mr MORE, for the defender, rose and said,—He had a few observations to make to his Lordship, on the point of *jurisdiction*.

LORD PITMILLY.—You should have interrupted me before I gave judgment,—it is not time now.

Mr MORE said, he had a motion to make to his Lordship, and now was the time for doing so. He submitted that his client would be treated with injustice, if he were

not allowed' to do so. He desired that the pursuer's counsel, (who had by this time left the bar), should be called back.

The pursuer's counsel were accordingly called, but did not at first appear.

Mr MORE again rose, and begged leave to submit his motion to the Lord Ordinary.

LORD PITMILLY.—I cannot hear you, Mr More, till the pursuer's counsel appear. You should speak to them, and make an arrangement, when I will hear you.

Mr MORE.—We propose that the pursuer be called upon to give his "oath of calumny" \* in this case. He stands in such a particular situation, that we cannot let the cause go to the Jury Court, until he gives his oath of calumny.

Mr MONCRIEFF—(who now appeared) answered, The cause is now remitted by your Lordship to the Jury Court, and no further proceedings can be had *here*. The defender may go to the Jury Court, and make his motion, to have the pursuer's oath of calumny taken *there*, if he chuses.

Mr MORE.—I now move, that the pursuer be ordained to give his oath of calumny. If your Lordship refuses this, let it be stated in your interlocutor.

Mr HENRY COCKBURN for the pursuer.—Your Lordship cannot stop the cause now from going to the Jury Court: even though we should offer the pursuer's oath of calumny, you have no power to receive it. The Act of Parliament is *imperative*, that the case shall be remitted to the Jury Court, if the summons be found relevant; and

\* By the Act 1429. c. 125. oaths *de calumnia* are authorized to be put to the parties, or their counsel, at the beginning of every cause, that the facts set forth by them in the libel (summons), or defences, are just and true. This oath *de calumnia* was, in practice, never put to any party, unless where the adverse party demanded it; and it has the effect to bar the swearer from insisting in those parts of his libel which he himself has acknowledged upon oath to be false or groundless." Ersk. B. iv. tit. iv. § 16.

you have found that there is here no good objection to the relevancy.

LORD PITMILLY.—I have no power to ordain the pursuer to give his oath of calumny. The only discretion allowed to the Lord Ordinary, by the Act, is to consider of an objection to the relevancy of the action. There is here no objection to the relevancy, and I can do nothing more than I have done. If you had intended to make this motion, (to Mr More), you should have done so *in initio*, or have stated it in your defences.—You did not do so. I sit here, under a special Act of Parliament, which directs a particular course of procedure in such actions as the present;—and I can do nothing but remit this case to the Jury Court.

An interlocutor, in these terms, was accordingly written out, and signed by the Lord Ordinary; but in a few days afterwards (4th Dec. 1821) the cause appeared in his Lordship's roll of motions, having been enrolled by order of his Lordship, when the following procedure took place:—

LORD PITMILLY stated, that a representation had been put in against his interlocutor remitting the cause to the Jury Court; but as, by the last Jury Court Act, all representations against such a judgment are prohibited, he had ordered the cause to the roll, to ask Mr More upon what ground he could present such a representation.

(*Mr More being at another bar,*)—

Mr JEFFREY, for the pursuer, stated, that, by way of conversation, he might say, Lord Archibald Hamilton was quite ready to take the oath of calumny, if required in the Jury Court; or, if it should be incompetent there, to make oath on a remit from the Jury Court to the Lord Ordinary; but his Lordship being exauctorated by the order he had already given, he would admit of no *signature*, or other proceeding, upon the present representation.



MR MORE (who now came to the bar) stated, that the impossibility of putting the oath of calumny in this case, as the summons was laid, was only *one* ground on which he had represented;—the principal ground was, the *incompetency* of the action; and the more he considered the summons, the more he was satisfied the action was incompetent. The Court of Session was instituted for reparation of patrimonial wrongs or losses, not for ideal damages in actions of defamation. The institution of the Jury Court did not in the least extend, nor was it meant to extend the jurisdiction of the Court of Session; so that any action that was formerly incompetent in the Court of Session, was still incompetent both there and in the Jury Court. Now, this summons did not state that the pursuer had *actually suffered* any real loss or damage from the slander that had been circulated against him, but merely that he *might have suffered* such loss. This was not a relevant allegation on which he could recover any damages; and it was on this ground that he chiefly asked the Lord Ordinary to receive the representation.

The counsel for the pursuer merely stated, in reply, that there was no relevancy in such an allegation. That hundreds of actions of damages had been sustained on the very same grounds; but at any rate it was now too late to propose any such defence. The Lord Ordinary could not now competently take any cognizance of the cause, after having sent it to the Jury Court.

LORD PITMILLY observed, that he had already considered the libel, and had thought it a fit subject of remit to the Jury Court; and he continued of the same mind still. As to the tendering of the pursuer's oath of calumny, if that point had been timeously stated, he would have taken it into his consideration; but he could not do so now. The defender was not without his remedy, for the Jury Court would hear him on this point; and, if they saw cause to direct the pursuer's oath of calumny to be taken, they would either do it themselves, or make a remit to him to take the oath.

The process was accordingly transmitted to the Jury Court, where the following precedence took place:—

*Issue Chambers, 6th December 1821.*

The agents having got notice to attend the Clerks of Court, Mr Aytoun, on the part of Lord Archibald Hamilton, agreed to hold his summons as a special condescendence of the facts he meant to prove, without prejudice to his giving in an amendment hereafter, if such should appear necessary, from any further defences being lodged for the defender. Mr Wilson craved time to give in a special condescendence, in addition to the defences.

Allowed till the 1st January next for that purpose, with power to the pursuer then to see the same.

*In the Jury Court,—6th December 1821.*

In respect the pursuer, in this case, agrees to hold his summons as a condescendence, it is ordered that the defender lodge answers thereto on or before the 1st of January 1822.

By the Court,

WILLIAM CLERK, C. J. C.

*In the Jury Court,—6th December 1821.*

*Notice.—Lord Archibald Hamilton v. Stevenson.*

I hereby give you notice, that, if you continue to insist for Lord Archibald Hamilton's oath of calumny in the above cause, he will be ready to appear in the Jury Court on Monday next, and make oath accordingly. I am your most obedient servant,

ROGER AYTOUN.

To Robert Sym Wilson, W. S.

On the day specified in the above notice, Lord Archibald Hamilton attended personally in Court, when the following procedure took place:—

*In the Jury Court,—10th December 1821.*

*Lord Archibald Hamilton v. Stevenson.*

*Moncrieff and Jeffrey for the Pursuer.—Alt. not appearing.*

MR MONCRIEFF for Lord Archibald Hamilton, pursuer, stated, that a motion having been made by the

defenders before the Lord Ordinary in the Court of Session, requiring the said pursuer to take the oath of calumny before any further proceedings in the cause, and that motion having been so far overruled by the Lord Ordinary remitting the action to this Court, the said pursuer being ready and willing to take the said oath, and most anxious to prevent all unnecessary delay in the cause, had now come to Edinburgh for the express and sole purpose of appearing in Court, and undergoing the oath accordingly. That he had given due notice of this intention to the defenders; that, in consequence of a demand so extraordinary and unusual having been publicly made, the said pursuer was most desirous of complying with it in the most public manner, and in presence of the Court; but that, if the said oath should not be administered to him on this day, being the last day of term, no opportunity would occur for doing so for several weeks; and that the said pursuer would, in the interval, be under the necessity of going to London on important business, and could not afterwards return without the very greatest inconvenience. That therefore the said pursuer then compeared personally, in terms of the notice to that effect, and declared that he was ready and willing to take the oath of calumny in this action, in such terms as might be directed by the Court, and according to the law and practice in such cases.

JAMES MONCRIEFF.

*Edinburgh, 10th December 1821.*—Received by the Court, and to make part of the process.

J. OSBURN BROWN.

After these proceedings in the Jury Court, where the process was thus fixed, a very extraordinary step was taken by the defender. His agent borrowed up the process from the clerks of the Jury Court, upon receipt, as if to prepare for giving in answers to the pursuer's summons, now held as a condescendence; but, in despite of the order of the 6th of December, by which he was ordained to lodge answers on or before the 1st January 1822, and directly in the face of the Act of Parliament, declaring such a remit to the Jury Court not to be subject to review by representation, petition, or appeal, he got his



counsel to prepare and present a petition in his name to the Lords of the Second Division of the Court of Session, in which, on the grounds formerly stated to the Lord Ordinary, of alleged irrelevancy of the libel, and incompetency of the Court to entertain such an action at all, he prayed their Lordships to recal the interlocutor of Lord Pitmilley remitting the cause to the Jury Court;—to find, that the action, as laid, was not competent before the Court of Session;—and to dismiss the same, reserving to the pursuer, if so advised, to bring a competent action for reparation of any loss he may have sustained; or to do otherwise in the premises, as to their Lordships should seem proper.

This petition was lodged on the 20th December 1821, and moved in Court of this date, (22d Dec. 1821.) when the following procedure took place:—

Mr JEFFREY, for the respondent, said, he considered it almost unnecessary to state any thing to the Court to shew that the petition was utterly incompetent. It was a petition in a case which was not in that Court. By the interlocutor of Lord Pitmilley, remitting the process to the Jury Court, the whole cause was removed from the jurisdiction of the Court of Session, and sisted in another Court. There were, therefore, no *termini habiles* to admit of the petition being received in that Court, any more than in any other Court of the realm. Your Lordships see that it is directly in the face of the statute, which enacts that the Lord Ordinary in all such cases do remit to the Jury Court.

The question before you, it is said, is a point of relevancy or competency. It is also a point of *law*; and if that point of law has been disposed of by the remit, it cannot be reversed here, but must be discussed in the Jury Court, where, on a motion being made, stating that there is such a point of law or relevancy to be determined, the Jury Court may remit back the process to the Court of Session to decide the question. Undenially the question before you is not a mere point of competency: It is also a point of law, and the words of the statute are express, requiring the Lord Ordinary to remit after hearing the parties on such point of law, which was here done; and having remitted the process to the Jury Court, it is declared by this Act, that such remit shall not be subject to review by “representation, petition, appeal to the House of Lords, or otherwise.” This petition is presented against *the law*, and

against the statute; and it is clearly not competent, and therefore ought not to be received.

Mr M'NEILL.—I submit to your Lordships that this is quite a mistake. Whenever a question is mooted as to the irrelevancy, or rather as to the competency of an action, this Court has a clear jurisdiction. I submit to your Lordships, that this statute proceeds on the clear assumption that the actions enumerated in it, as falling to be directly remitted to the Jury Court, are such as would otherwise be sustained by this Court, and such as fall under your jurisdiction. It is not the assumption of this Act of Parliament, that the actions appointed to be remitted to the Jury Court can be such as this Court would not otherwise sustain;—say an action of damages founded on an allegation of adultery. If such an action were remitted to the Jury Court, would that be a case of *damages*, such as this Court could give judgment in, even although a verdict of a jury, finding the facts proved, and assessing the damages, were to be laid before you? That would not be a case of competency for the Lord Ordinary to remit to the Jury Court. This Court has no jurisdiction to determine such an action; and the Act of Parliament undoubtedly proceeds upon an assumption, that the judgment of the Lord Ordinary remitting to the Jury Court, which is declared to be final, and not subject to review by petition, was a judgment in a cause, in which such a judgment could not be *competently* pronounced: if our argument is correct, this Court has *no jurisdiction in such cases*. I submit, that it is quite clear that it is not the meaning of the Act that *such a case* should be the subject of a remit. Therefore, so far as regards the *competency* of the action, our objection is a good objection *in law*. The argument of the other party, as to the *competency of receiving this petition*, must therefore fall to the ground, if your Lordships have no jurisdiction in the original action.

Mr CRANSTOUN.—There is no question here, but that of the *competency of this petition*. It is clearly *incompetent*, and your Lordships cannot write upon it. If ever there was an Act of Parliament, clear and imperative in its enactments, it is the present. I would particularly refer your Lordships to the third clause of the statute, which is in these terms:—“And be it farther enacted, That it shall be *competent* for the Lord Ordinary, *if it shall appear to him that there is no question of law or relevancy which ought to be decided* previous to the remit of the cause to the Jury Court, *forthwith* to order such cause to be remitted to the said Court, for the purposes aforesaid:

Provided always, 'That it shall also be competent for the Lord Ordinary, *if he sees cause, to reserve* the alleged question of law to the consideration of the Court of Session, after the matters of fact shall have been found by a Jury; and *in all such cases*, the interlocutor of the Lord Ordinary, ordering the cause to be remitted to the Jury Court, whether with or without a reservation of the alleged question of law, *shall not be subject to review*, by representation, petition, or appeal to the House of Lords, or otherwise."

The Lord Ordinary determined in his own mind, that there was no point of law which ought to be decided, or requiring to be reserved for the consideration of the Court, and therefore, in terms of this clause of the Act, he *did remit* the process to the Jury Court. *There* the process has been transmitted; the parties *have appeared in that Court*; and an order on the defender to lodge an additional defence *has been made*; so that the cause is now fixed in another Court; and the process has been borrowed up from the Jury Clerk upon receipt, and is not in that Court. In these circumstances, is it competent to your Lordships to entertain this petition? *What is the case here?* Is it a question of *jurisdiction*? It is *called* so, indeed, by the petitioner; but it is, in truth, nothing more than a question of *competency*; and if the Lord Ordinary was of opinion, that *no* such question ought to be decided previous to the remit of the cause to the Jury Court, and did *not see cause* to reserve the alleged question for the consideration of this Court, how is it possible for your Lordships to receive this petition? You cannot do it but in the face of the Act. But the petitioner's counsel have stated the hardship of this case, and attempted an illustration of it, by the supposition of a remit being made of an action of *damages* for *alleged adultery*, which is a ground of action competent only in the Consistorial Court. But the answer to this is, all such questions *are open to him*, and may be stated *in the Jury Court*, who have power by the Act, and will remit back the process to the Court of Session to hear parties on any such question, if they see fit. *There* the other party may do what they please. The Jury Court may remit back to the Court of Session; and if they do not, but proceed to the trial, if there be any question of law or relevancy arising in the course of the trial, the gentlemen on the other side may take a bill of exceptions against the verdict, upon which they will be entitled to a hearing in presence of this Court. So that every remedy, in regard to questions *of law*, is open and provided for by the Act. The statute was passed for the express purpose of *preventing delay* in the decision of such questions as the present. Such actions are always sent to the



Jury Court, and no representation is ever allowed. They are all refused, as a *matter of course*, without any interlocutor to that effect being written out, as being *wholly incompetent* under the statute, which is *imperative* in its enactments; and if you once get out of the words of it, you will always get into questions such as the present. The party in the wrong will always say this is a question of *jurisdiction*, the action is *incompetent*, and I am entitled to petition the Court against the remit to the Jury Court. The statute will thus be *always evaded*. The object of the Act was, to give to the Lord Ordinary full and *final jurisdiction* in all such cases. The words of it are express to this effect, that, "*in all such cases*, the interlocutor of the Lord Ordinary, ordering the cause to be remitted to the Jury Court, whether with or without a reservation of the alleged question of law, *shall not be subject to review*, by *representation, petition, appeal* to the House of Lords, or otherwise."

MR MORE.—This question is most important, both to the jurisdiction of this Court, and also to that of the Jury Court. We are told by the counsel of Lord Archibald Hamilton, that we may go *there*, and be heard upon this question. Those gentlemen who have great practice in the Jury Court know best what are the forms of proceeding in that Court. We have not been so conversant with it. These parties now tell us, that we may go there, and have this legal question discussed; but they have taken care to prevent all such legal discussion from taking place in the Jury Court. When they were asked to give in their condescendence, they answered, that they would give in *none*, but would hold their summons as a condescendence. They may say they were entitled to do so, but they thereby prevented all legal discussion on the competency of the action. All redress is thus denied to us for the injury done by the remit, if we are thus forced to go to trial in the Jury Court. If the Lord Ordinary remitted this cause to the Jury Court *per incuriam*, which we say he did, is there *no recourse* to be had against such an order? We say that the present action is *not competent*, but is totally *irregular and informal*, and yet it is sent to the Jury Court. Is it not competent for your Lordships, in such a case, to interfere, and call back the process from the Jury Court, to which it has thus been most improperly sent, being altogether out of the statute? No one who reads this summons, but must see that it is a case where a *point of law* is involved which *ought* to be *discussed and determined* before being remitted to the Jury Court. A question *necessarily* occurs here, in point of law or relevancy, which *may* indeed be sent to the Jury Court with-

out previous discussion here ; but still it is certainly *competent* to decide upon it in this Court. If a Lord Ordinary sends such a case to the Jury Court, which has *no jurisdiction* to determine a question of law or relevancy, a *new law* may be introduced before your Lordships are aware ; because such a practice, if persisted in, will introduce a precedent, that such cases, though originally only competent in this Court, may soon be held *not to be so*. I would avoid entering upon the merits of the case, but confine myself entirely to the question of *competency* of the action in this Court. On the *merits* of it, if we were in the Jury Court, we would submit, that we were *not* liable in damages to the pursuer. The sole question here is, Is this a libel or not which is *relevant to carry damages*? In England one may prosecute such a libel for *damages* on the ground of *adultery*, or any other ground, as well as for *damages* for a *libel* ; but we are differently situated *here*. I ought to apologize to your Lordships for the brevity of this petition ; and if I had been aware in time of a similar petition being to be presented to the other Division of the Court, and which is this day to be moved in that Division, I would have given a fuller argument on the point than is here before you.\* I hope your Lordships will consider this case as one of importance, and not refuse this petition without letting the country know *what effect* the decision of a Lord Ordinary is to have in such cases. The question for your consideration is, we say, that this action, and these proceedings, from beginning to end, are totally irregular and incompetent, and will do a great injury to my client ; and will not your Lordships stretch forth your hands and recal this remit ? I mean no disrespect to the Lord Ordinary, in saying that the question was overlooked, and the remit made *per incuriam*, because I attempted to satisfy him that it was incompetent, chiefly by insisting on the pursuer's oath of calumny ; but I did not succeed. Lord Pitmilley said, indeed, if we had insisted on the question of *competency*, by *itself*, he might have ordered pleadings ; but as we did not do this, but argued that the libel was also irrele-

\* Mr More referred to a petition for Sir William Rae, Bart., Lord Advocate of Scotland ; the Right Hon. William Arbuthnot, Lord Provost of Edinburgh ; James Wedderburn, Esq. Solicitor General of Scotland ; Sir Walter Scott, Bart. ; John Hay Forbes, Esq. Advocate ; Henry Home Drummond, Esq. Advocate ; John Hope, Esq. Advocate ; and John Wauchope, Esq. W. S., against a similar remit to the Jury Court, of an action of damages for a libel in the Beacon, brought against them by James Gibson of Ingliston, Esq. W. S., which the First Division of the Court, (with the exception of Lord Balgray), thought should be answered,—but afterwards, on advising it with answers for Mr Gibson, unanimously refused as *incompetent*.

vant, and insisted on the oath of calumny, he considered himself bound to remit.

LORD GLENLEE—Thought this was a very plain case. He considered the petition perfectly *competent*. There were many questions of *law* that might occur entirely different from the *relevancy* of an action; and such questions were *reserved* by the Act for the decision of this Court: but, in questions of *relevancy*, the only thing to be considered was, whether the facts alleged authorized the conclusions of the summons. In the case of an action of *damages* for *breach of bargain*, for example, suppose the pursuer should aver in his libel that he had suffered no loss though he might have suffered loss, and a defence is put in, objecting to the competency as well as the relevancy of such an action, and the Lord Ordinary were to repel the defences, and to remit to the Jury Court, would it not be competent for their Lordships to review that judgment upon a petition? He certainly thought it would. He was for *sustaining* the petition as *competent*, but for *refusing* it upon the merits; because the summons in this case averred that the pursuer had suffered loss, and therefore claimed damages.

LORD CRAIGIE—Was rather inclined to think that the petition should be *refused*; but as it referred to an Act of Parliament, none of the clauses of which were quoted in the petition, and of which, therefore, he had no opportunity of judging, (the petition having been put into his hands, and having been perused by him only last night, when he had no leisure to consult the Act itself), he was not prepared to give such an opinion as he could wish, not having duly considered the subject. He wished the petition to be *delayed* till after the holidays. In the meantime, he could not consent to refuse the petition, but would rather *see an answer*, if that was thought necessary.

LORD BANNATYNE—Inclined to hold the petition as competent, but would rather that the case should lie over for farther consideration.

LORD JUSTICE CLERK.—There is here a question, both of *competency* and of *relevancy*. I cannot say that we ought to refuse this petition. As to the question of *competency*, it is too much to expect of us, that on such a petition, stating, distinctly enough indeed, but *very shortly*, the circumstances of the case, and the nature of the question, and referring us



to an Act of Parliament, none of the clauses of which are quoted, that we should, *de plano*, decide a question of great importance arising on the terms of this Act of Parliament ;— and I think your Lordships should either appoint it to be answered, or delay the consideration of it till the first sederunt day in January next, that we may have an opportunity of making up our minds more deliberately upon it. I have endeavoured to form an opinion upon the petition, which I will state to the Court just now *if I am driven to it* ; but I would rather wait till after the holidays, than give a hasty opinion, at this period of the Session, on such a serious question.

MR CLERK.—The question here is, Should your Lordships *so far* entertain the petition *as to write upon it* ? We have no objection to a *delay* for a reasonable period ; but we do not wish your Lordships to *write* upon the petition, because, if you do, the defender will be enabled to go on in the ordinary course of the Court of Session, opposing the remit to the Jury Court by petition, &c. and even appealing to the House of Lords, where the process may remain for years without our being able to form even an idea when it may come back. I pray your Lordships, therefore, to *refuse to write* on the petition ; *not* that you should *put down these words in your interlocutor*, but that you would merely allow the petition to *lie over*.

LORD GLENLEE.—I am clear for *writing* upon the petition, but then I am for *refusing* it.

MR MONCRIEFF.—The purpose of this Act of Parliament, the third clause of which was read to your Lordships by Mr Cranstoun, is, that all actions of damages, *such as the present*, should go to the Jury Court *forthwith*. Now, if any party present a petition to your Lordships against an interlocutor of the Lord Ordinary remitting such action to the Jury Court, and you *refuse the petition*, by an interlocutor *written upon it*, it follows, as a *necessary consequence*, that *no* action of damages whatever *can* go to the Jury Court ; at least this is not likely to happen ; for whenever a defender knows himself to be in the wrong, he will do all in his power to prevent the action from going to the Jury Court. He will present a petition to the Inner-House, alleging that there is a question of *jurisdiction* involved in the case, that the action is *not competent*, and will pray your Lordships to recall the remit to the Jury Court ; and although your Lordships *refuse* the petition, and find that the action *is* competent, he will immediately present a petition and appeal to the House of Lords against

your judgment; and thus *no action of damages whatever* can be sent *direct* from this Court to the Jury Court to be tried, as directed by the Act, without coming first into the Inner-House, and from that going to the House of Lords, and again coming back to this Court, *unless the defender pleases*; and all this will undoubtedly take place if your Lordships entertain such petitions as the present, *in the face of this express Act of Parliament*.

MR MORE.—The case is not so. This Court may *refuse to give leave to appeal*, and prevent the party from going to the House of Lords until the question be finally decided. Your Lordships may do this. But they wish your Lordships to *prevent* us from being heard on an important question of *jurisdiction*, which ought certainly to be decided before we go into the Jury Court.

MR MONCRIEFF.—The petitioner *will not be prevented* by the remit from having the question of jurisdiction decided before going to proof, although the petition be thrown over the table. If they can show, in the Jury Court, that there is such a question which ought to be decided before going to proof, the Jury Court have it in their power *to remit back* to this Court, *any time before trial*, that the question may be determined here. In a case which came before Lord Gillies the other day, the party made a similar attempt to get the Court to interpose, and stop the remit. The Court, however, *paid no attention to it*. The case went to the Jury Court accordingly, and was *remitted back* to decide the question of law before going to proof; and Lord Gillies heard the parties accordingly, and decided the question. Nay, more; the party may take a bill of exceptions against the verdict, even after trial; and after all this, if there still remain a question of *jurisdiction* to be determined, he may present an appeal to the House of Lords.

LORD JUSTICE CLERK.—I think we ought not to touch the point of *relevancy* of the libel until the question of *competency* be disposed of. For that purpose we should appoint the petition to be answered.

MR JEFFREY.—In the case of Mr M'Kenzie of Ardross, the Court said they would *take an answer* to the petition. It was stated from the bar, that this would be *held as an interlocutor*, against which the party might present a petition, and thus be able to go to the House of Lords; upon which the Court threw the petition over the table.

LORD JUSTICE CLERK.—Then your Lordships will just allow this petition *to stand over*.

LORD BANNATYNE.—I think we should have *an answer* to the petition on the question of *competency*, which is not fully discussed in the petition.

LORD CRAIGIE.—I think we will be able to make up our minds on the competency of the action, when we have an opportunity of consulting the Act of Parliament. In the mean time, I think the case may *just stand as it is*.

LORD JUSTICE CLERK.—IF I COULD SUPPOSE that the pursuer *had any intention of going on in the Jury Court*, I would be for writing upon the petition.

Mr MORE.—*That* is the sole object of all this opposition. As the Jury Court meets, after the recess, the day before your Lordships; it is evidently their intention to proceed there, and to procure some order, which it will not be in the power of your Lordships to recall or remedy.

LORD JUSTICE CLERK.—*We must take care, that nothing shall be done in this case any where else.* We will simply *delay* the consideration of this petition till the Court meets again, PROVIDED the parties *come to an understanding*, that *no proceedings* shall take place in the Jury Court, in the mean time. IF THEY DO NOT, *we will appoint the petition to be answered*.

Mr JOHN CLERK.—We think it right to inform the Court, that *it is our purpose to proceed in the Jury Court*, and we will *come to no understanding* or agreement with this petitioner, as to the course we intend to adopt.

LORD JUSTICE CLERK.—*Then* we appoint this petition *to be answered* on the competency.

Ordered accordingly.

*In the Jury Court, 14th January 1822.*

LORD ARCHIBALD HAMILTON v. STEVENSON.

(*The notice of the motion for a peremptory order on the defender to put in answers, being read by the Clerk,*)

Mr MONCRIEFF, for Lord Archibald Hamilton; moved,—That, in terms of a notice given to the defender, he had to



call to their Lordships' recollection, that an order had been made in December last for a condescendence by the pursuer of the grounds of his action. The pursuer had, in place of lodging a condescendence, held his libel as a condescendence, and thereupon an order had been made on the defender to put in answers. The defender had not yet complied with that order, although full time had been allowed to him for that purpose ; and he now moved the Court to make a peremptory order upon him to lodge his answers.

Mr M'NEILL, for the defender.—In answer to this motion, I shall only state a matter of fact which your Lordships are probably not acquainted with, but which the other party are in the full knowledge of,—that, after the remit was made by the Lord Ordinary to this Court, the very day subsequent, this order was moved for, and taken, to lodge answers to the summons held by the pursuer as his condescendence. Subsequent to that step, a petition was presented to the Court of Session, as soon as it could be prepared, founded on the plea that this case was not competent under the statute, and that the Lord Ordinary had no power whatever to remit it to this Court, but ought to have dismissed it at once, as incompetent and irrelevant. That petition was moved in the Court of Session, and an objection was taken by the pursuer, under the statute of the 59th of the late King, against the competency of the petition, which he contended the Court should not receive, or even write upon. But the Court were not satisfied that it was a good objection. If they had been so, they would at once have dismissed it, or have refused to write upon it. But they considered, that a question of importance occurred, as to the competency of the original action, while they were clearly of opinion, that the petition against the interlocutor of the Lord Ordinary, ordering a remit, was a competent petition ; and they accordingly made an order on the pursuer to answer it. The pursuer, accordingly, did put in answers to the petition, and the question is now depending in the Court of Session, whether the action, as originally laid, be competent or not ; and the sole question here is, whether or not are we to be compelled to go on here, before your Lordships, to try the merits of this case, when the question is now depending in the Court of Session—whether or not this be a case which can be tried by this Court at all ? And, with the same propriety that your Lordships renew the order on the defender to answer the pursuer's condescendence, may you proceed to try this cause by a Jury, after the cause is dismissed by the Court of Session as incompetent. In these circumstances, your Lordships surely will not be inclined to do any thing which may

even have the appearance of bringing this Court in collision with the Court of Session, in the exercise of their respective jurisdictions. The other party pleaded in the Court of Session, that their Lordships should not interfere, so far even as to write upon the petition, because the cause was not before them, but in this Court ; upon which the Court stated, if the pursuer would come to an understanding and arrangement with the defender, not to proceed in this Court, they would not write upon the petition, but simply allow the case to stand over till after the holidays ; but when the pursuer's counsel said they would come to no such understanding, the Court considered it as their imperative duty to write upon the petition, and they *did write upon it* accordingly, and appointed it to be answered. It is a most improper proceeding on the part of the pursuer to attempt to bring the jurisdiction of this Court in collision with that of the Court of Session,—and it is most irregular on his part to attempt to proceed here, while it is still undetermined whether the action be competent or not. The Court of Session is alone competent to try such a question ; and I therefore submit, that the motion now made should be refused.

Mr JEFFREY.—It is said on the other side of the bar, that there is here a collision of jurisdictions, or a risk of collision, between the jurisdiction of this Court and that of the Court of Session ; and the question is gravely put, whether your Lordships will allow the parties to proceed here, until the Court of Session have determined the alleged question of competency ? Before your Lordships pronounce any opinion on this question, you should have in view the real state of matters ; and who is the party with whom these alleged irregular proceedings began.—I ask your Lordships, do they appear on the record ? Where is the record but upon the table of your Lordships ; and no trace of these proceedings is there to be found. This is an action for damages and expenses only ; and it was remitted by the Lord Ordinary, simply, to this Court, as is always done in similar cases, in terms of the requirement of the statute. Does it not appear from the record, that the Lord Ordinary remitted the cause to this Court,—and are not the proceedings here ? And particularly, does not the record exhibit the holding of the summons as a condescendence, followed by an order to put in answers, which I now call on your Lordships for a peremptory renewal of ? Is there any thing inconsistent or irregular in all this ? or any thing here *in this Court*, which can afford room for collision betwixt the jurisdiction of your Lordships and that of the Court of Session, when all that you have is the mere

averment of a party, stating, that a petition against the competency of the original action has been appointed to be answered by the Court of Session. Your Lordships have not the power of taking cognizance of such allegations. You must look to the statute, which is the charter of the Jury Court. I am not bound to know what took place in another Court, in the face of the proceedings here, as they appear from the record on your Lordships' table. I, individually, however, may, and do admit, that a petition against the remit to your Lordships was presented to the Court of Session for the defender, and was appointed to be answered, but as to the competency of the petition itself only: we, accordingly, put in an answer, containing a protest, stating in the strongest terms, that we did so, merely out of respect to the Court, although we conceived the whole proceeding to be incompetent, and contrary to the express terms of the statute. The pursuer is now here, before your Lordships, where his condition and quality has been recognized by the Court; and he craves a renewal of the order on the defender to put in answers to the condescendence, that his cause may go on in the usual way. He is answered, that there is a *lis pendens* before another Court, and that the cause may never come to be tried here; and that if your Lordships do proceed, there is a *possibility* of a collision of jurisdiction between the two Courts. I apprehend that your Lordships are called upon to grant—that which I conceive I have an undoubted right to ask—a step of procedure, not challenged or challengeable, on any proper ground;—and I cannot imagine that you will refuse, or delay to grant what I request, on the *mere suggestion* of the defender, that he has made an attempt,—for it is no more,—to go back on a question of alleged incompetency in this action, which action is now before you, on a regular remit from the Court of Session, and the record of it lying on your table. The objection to my motion goes to this,—that wherever a petition is presented to the Court of Session, or any other Court, on an alleged question of competency, your Lordships are not to go on with any cause whatever, however regularly remitted to you. By putting a petition into the boxes of the Lords of the Court of Session—no matter on what grounds,—if such averments are to be entertained by your Lordships, it would be in the power of a party who wished for delay, to stop all proceedings here, *without bringing forward any argument upon the competency* of the action;—and, upon a mere statement that such a petition was lodged, to maintain, that that circumstance should be held by your Lordships as a bar to your doing that, which you are not only authorized, but imperatively *required* to do by the Act. A



petition is presented to the Court of Session, on the last day of its sitting, and is appointed to be answered on the competency, by the box-day. This is exactly the same as if it had been ordered to be put into the boxes on the day preceding the meeting of the Court, as no judgment of the Court could possibly be given before its meeting after the recess. It was not to be expected that a pursuer of an action of damages would assent to the prayer of such a petition, attempting to bring back to the Court of Session a process regularly remitted here. If your Lordships are to abandon your own co-ordinate supreme jurisdiction, merely because an attempt is made in the other Court, to prevent you from proceeding, and which Court has done nothing but appoint an answer to be made to the petition, as to the competency of receiving it, —you will thereby do a serious injury to the pursuer, and to your Court itself. Is *that* a ground for asking you to refuse to go on in the straight course pointed out by the Act?

Seeing there is nothing here,—nothing in the legal horizon,—either as to the want of a *pursuer*, or the want of a *process*, can you refuse the present motion, or remit this case back to the Court of Session,—no application being made here on the part of the defender for such a remit,—no point of law yet arising in this Court, requiring it to be remitted for the determination of the Court of Session,—and no ground of doubt or hesitation as to the competency of your own jurisdiction? I ask, if this application,—for there is no remit—no record—or any thing to shew, to satisfy you that any proceedings have taken place, or could take place, in this cause elsewhere;—on the contrary, it is clear that *the record is here*, and various proceedings have taken place in this Court by the appointment of a condescendence, and an order pronounced on the defender to answer it, as well as the present motion for a renewal of that order;—I ask, if there has been any thing stated, or any question of law raised by the defender, sufficient to induce you to hesitate to grant this order for an answer to the condescendence, which I now demand? If, on a mere *suggestion* by a party, that there *may* be a question of competency to be previously determined in the Court of Session, you stop the ordinary course of your proceedings, you do so on a *bare allegation* of proceedings being had in a Court whose jurisdiction is not more supreme, and whose powers are not so well defined, as the powers and jurisdiction of this Court are. I submit, when nothing of this kind is stated,—nothing to shew that there is a question of competency to be decided,—or that your Lordships have not power to proceed in this cause in the usual course of all such actions,—that I am entitled to resist this *suggestion* on the behalf of the defender, and to press the motion that has been now made.

MR MORE rose to reply, but was stopped by the Lord Chief Commissioner, who said, the Court could only admit of a motion, answer, and reply. Mr More still requested to be heard, and contended, that the Court had a discretionary power, in all cases, to hear two counsel on each side. But the Commissioner observed, that, admitting the Court to have such discretionary power, they would exercise it in refusing to hear Mr More.

THE LORD CHIEF COMMISSIONER.—It gives me no surprise that the present motion has been made and insisted in on the one hand, or opposed on the other; because, if not made, the party might have supposed he would otherwise have got into a situation which might have had an unfavourable influence on his cause. But there is a discretionary power necessarily vested in this Court, in the exercise of which nothing is so material to the dignity of the Court, to the ends of justice, and to the good of the country, as that we take care that we be not *too rapid* in our proceedings. But that will not be the fault of this Court.—Moderation of conduct, in the infancy of this institution, is essential here. It having been *stated* to this Court, that there *is* a question of competency depending in another Court, and that the Court from which the record comes to us; we will not rashly accede to the present motion, but do in this, as we would do in all other cases, make no order at all in the mean time, till the petition and answers, which are stated and acknowledged to be now lying before the other Court, shall be disposed of.

This determination of the Jury Court put a stop to the procedure there for a short time.—The petition and answers were, of this date, (19th Jan. 1822), advised by the Second Division of the Court, when the following procedure took place:—

MR M'NEILL.—I understand that the question now to be determined by your Lordships, is a question strictly regarding the *competency* of this petition, and does not touch the merits of the original action.

In answering the petition, or, I should rather say, in stating an objection to its competency, the respondent has not fairly met the grounds of the argument maintained in the petition, and he has mistated the import of the Act of Parliament. The objection to the competency of the petition stated in the answers, is founded upon the *third* section of the Act of Parliament, declaring, that an interlocutor of the Lord Ordinary ordering a cause to be remitted to the Jury Court, whether with or without a reservation of any alleged question of law, shall not be subject to review by petition; and on the 15th

section of the Act, which says, “ that it shall not be competent, by representation, reclaiming petition, bill of advocation, appeal to the House of Lords, or otherwise, to bring under review any interlocutor of the said Divisions, Lords Ordinary, or Judge of the Admiralty, ordering a trial by Jury.” These are the two sections of the Act of Parliament which are founded upon by the respondent, as precluding the competency of this petition.

These sections do not, however, apply to the present case. Your Lordships will particularly attend to the 1st section of the Act of Parliament. That section specifies the particular classes of cases in which it is provided that a certain form of procedure shall take place: “ That, in all processes raised in the Outer-House of the Court of Session, by ordinary action or otherwise, on account of the *injuries* to the person, whether real or verbal, as assault or battery, libel or defamation; or on account of *any injury* to moveables, or to lands, where the title is not in question; or on account of breach of promise of marriage, seduction, or adultery; or any action founded on delinquency, or a *quasi* delinquency of any kind, where the conclusion shall be for damages and expenses only, the Lord Ordinary of the Outer-House, before whom such processes shall be enrolled, do remit, and he is hereby authorized and required, after defences are lodged, to remit the whole process and productions forthwith to the Jury Court in civil causes.”

Your Lordships will here observe, in the first place, that the action must be one for *an alleged injury actually sustained*, and not for a *possible* injury. The Act specifies this most particularly. Then it goes on in the second clause to say, “ That, if it shall appear to the parties, or either of them, that there is a question of law or relevancy which ought to be decided, previous to the remit of the cause to the Jury Court, it shall be competent for them to state the same orally to the Lord Ordinary; who, if he thinks fit, may give judgment *de plano*, or order pleadings on the alleged question of law or relevancy; and, if he orders pleadings, then the case is to be proceeded in according to the course of the Court of Session; and, *as soon as such question of law or relevancy shall be disposed of*, if matters of fact remain to be proved, the whole process and productions in the case shall be forthwith remitted to the Jury Court for the purposes aforesaid.”

Under this section it is stated that this procedure took place:—that I stated that it appeared to one of the parties, that a question of law or relevancy arose on the face of the summons, which ought to be decided previous to the cause going to the Jury Court:—that I stated the question of relevancy accordingly;—no reply was made by the pursuer’s



counsel, upon which the senior counsel of the defender got up and stated all the grounds of objection to the action over again:—that the counsel for the pursuer still declined saying any thing, and the Lord Ordinary immediately remitted the cause to the Jury Court. But this is quite a mistake. It must be remembered that the objection I stated to the relevancy of the action was not *repeated* by Mr More, who only insisted, that in this case it might be necessary to take the pursuer's oath of calumny, which the Lord Ordinary admitted might have been done before he pronounced his judgment; but it was then too late, as he had already pronounced judgment remitting to the Jury Court.

There is another section of the Act to which I request your Lordships particularly to attend, because it does not appear that the Lord Ordinary has attended to it in making this remit. The 2d section enacts, that the Lord Ordinary shall either give judgment *de plano*, or order pleadings on the alleged question of law or relevancy. *He must give judgment* in some shape or other. The 3d section refers to another class of cases, where the Lord Ordinary is *not* required to give judgment at all. By that section it is enacted, “That it shall be competent for the Lord Ordinary, if it shall appear to him that there is no question of law or relevancy which ought to be decided previous to the remit of the cause to the Jury Court, forthwith to order such cause to be remitted to the said Court for the purposes aforesaid: Provided always, That it shall also be competent for the Lord Ordinary, if he sees cause, to reserve the alleged question of law for the consideration of the Court of Session, after the matter of fact shall have been found by a jury.”

Now, *two* proceedings are contemplated here. The one, *a judgment* of the Lord Ordinary on pleadings for the parties, by which is certainly not to be understood “written pleadings.” The second, where a question of law or relevancy occurs, and the Lord Ordinary remits *de plano* to the Jury Court. Under the first course of proceeding we should have a recorded judgment of the Lord Ordinary upon the question repelling the objections to the libel; but instead of that we have no such judgment here, but a judgment of the Lord Ordinary under the 3d section of the Act, simply remitting the cause to the Jury Court, which is not the course of proceeding authorized by the Act; and there is no record of the judgment repelling the objection stated by us to the competency of the action, against which it was possible for the defender to represent, and no question is reserved by the Lord Ordinary for future consideration.—So that thus the defender is completely cut out of the benefit intended to be given by the Act.

The 15th section founded on by the pursuer does not apply to this case at all. I pray your Lordships to attend to the words of it ; because although it has been founded on by the pursuer, it does not at all apply to this case, but relates to quite a different class of cases. It does not relate to the case of a remit at all, but to an interlocutor of either of the Divisions of the Court of Session, Lords Ordinary, or Judge of the Admiralty, *ordering a trial by jury* ; and if either this Court, the Lord Ordinary, or Judge of Admiralty, order a trial by jury, the Jury Court have no power to consider whether any question of law or relevancy remains to be decided, but the interlocutor remitting the cause remains unalterable ; and if a trial be ordered, the Act declares that such order shall not be subject to review. That section of the Act must therefore be kept entirely out of view in the consideration of this question.

I shall now go back a little upon the proceedings, and consider in what way it is alleged by the pursuer, that the defender is cut out of all legal redress *here*. What have been the proceedings which are founded on as having this extraordinary effect ? The very day after this remit was made the pursuer went to the Jury Court, where he gave in a minute holding the summons as a condescendence, which was appointed to be answered ; a proceeding to which the defender was not a party. That surely does not cut him out of his legal rights. The pursuer says that there was a subsequent proceeding in the Jury Court ; that the pursuer appeared personally in Court in order to take the oath of calumny, and that the counsel for the defender *was present* upon that occasion. That is a misstatement in point of fact. We argued before the Lord Ordinary, that under the terms of the summons, as laid, we could derive no benefit from the pursuer's oath of calumny, which in an action of damages we were entitled to insist for, but which in the present instance could be of no use, from the alternative nature of the libel. In consequence of our having alluded to the pursuer's oath of calumny for the sole purpose of shewing the irrelevancy of the libel, the pursuer's agent wrote to the agent of the defender a letter in the following terms :—

*Edinburgh, 6th December 1821.*

SIR,—I hereby give you notice, that if you continue to insist for Lord Archibald Hamilton's oath of calumny in the above cause, he will be ready to appear in the Jury Court on Monday next, and to make oath accordingly. I am, &c.

ROGER AYTOUN.

To this the agent for my client answered :—

Edinburgh, 53. Queen-street, 8th December 1821.

SIR,—I received your note yesterday afternoon, intimating that Lord Archibald Hamilton would be ready to appear in the Jury Court on Monday, and make oath of calumny, if this should still be insisted on. In answer, I beg leave to observe, that it never was the wish of Mr Stevenson, or of his advisers, to put his Lordship to any unnecessary trouble, or to insinuate any doubt or suspicion injurious to his Lordship. The sole reason of mentioning the oath of calumny, was to place in a strong point of view our objections to the competency of the very strange summons which has been framed in this case, and which, so far as we can learn, is without a parallel in the Court of Session.

In reference to such a summons, the oath of calumny would be in a great measure useless; and the mention of this oath was merely to confirm our argument, that the summons as laid was incompetent in the Court of Session. If the summons had stated in the usual terms, that the pursuer *had been injured or damnified*, and on that account claimed damages, the oath of calumny would probably never have been thought of; but the very extraordinary alternative stated in the summons, and to which an oath of calumny is plainly inapplicable, led us, with the view of bringing this more clearly under the view of the Lord Ordinary, to refer to this rather unusual proceeding. This being our chief view in proposing the oath of calumny, it would be nearly useless that it should be taken in reference to the summons as it now stands.

I have thought it right to give you this explanation, as I see our object in alluding to the oath of calumny has been totally misunderstood by you.

After this candid statement of our views on the subject above-mentioned, I trust you will see the propriety of striking out the objectionable parts of the summons, which, in our opinion, rendered it totally incompetent to be entertained in the Court of Session, or remitted to the Jury Court. If not, we must still adopt some method of obtaining the justice to which we conceive ourselves entitled; and in that event we reserve the right of insisting for the oath of calumny, which may be done by Lord Archibald on commission, should it not suit his Lordship's convenience to attend personally in Court. I am,  
&c.

ROBERT SYM WILSON.

He naturally thought that this put an end to farther proceedings in this matter; but not so. He received a reply in the following terms:—



Edinburgh, 10th December 1821.

SIR,—Lord Archibald Hamilton came to town last night, and, notwithstanding your letter to me of the 8th, is resolved to go to Court to-day, and offer his oath of calumny; of which I give you this notice, that you may be ready to attend along with your counsel. I regret I could not do it earlier, as I did not see Lord Archibald till a very late hour last night. I am, &c.

ROGER AYTOUN.

Rob. Sym Wilson, Esq. W. S.

To which the following answer was returned :—

*Lord A. Hamilton v. Stevenson.*

Edinburgh 53. Queen-street, 10th December 1821.

SIR,—I am favoured with your letter of this date, informing me that Lord Archibald Hamilton is resolved to go to Court to-day, and offer his oath of calumny in the above cause. Referring to my letter of the 8th instant, I have only to remark, that it appears to me quite useless to take his Lordship's oath upon the summons as it stands at present, and on that account I do not mean to attend in the Jury Court to-day. I am, &c.

ROBERT SYM WILSON.

Lord Archibald Hamilton attended, however, to take the oath. We had no counsel present, though Mr More happened to be in Court on other business; and seeing him, the Lord Chief Commissioner asked if he was instructed to require that his Lordship's oath should be taken. Mr More answered, that he was not instructed to appear. To hold this as an appearance in the Jury Court is altogether ridiculous; and no argument can be founded upon it to show that we were parties to these proceedings. But the argument in our petition, *which is not even touched* in the answers, is, that the Act of Parliament gives no power to the Lord Ordinary to judge of causes in which he had not previously a power of judging. The Act proceeds entirely upon the assumption, that the cases which he is authorized to remit to the Jury Court, are those in which he had previously the power of judging. Holding this to be *the spirit* of the Act, we have stated an objection to the jurisdiction of the Lord Ordinary. It is admitted by the respondent, that the action may be incompetent; yet he says (Answers, p. 16), "The respondent has not the slightest hesitation in saying, that if the *most incompetent* action of damages *that is conceivable* were to be re-

mitted, without written pleadings, by a Lord Ordinary to the Jury Court, that remit could not, *under this statute*, be petitioned against." And he puts the case thus: "*Under this statute*, it is quite plain that, where a summons concludes for damages and expenses alone, and written pleadings have been avoided, *no remit whatever* can be questioned by petition."—Now, there is *no argument* in the answers on this point. Your Lordships will only find this solitary statement, that *under this statute*, in the case put, "no remit whatever can be questioned by petition; nor will it do to insinuate that the statute presumes the action to be rightly raised. Under this pretence, the whole statute might be evaded in every case whatever. Parliament has stated, in express terms, the sort of actions which are to be tried by jury. This is confessedly one of them; and therefore there is *no question of law whatever*, whether it be of competency, or of relevancy, or of any thing else, that can justify a petition against a remit." That is all I find in these answers; and therefore the pursuer must assume, what is not set forth in the statute, that the Lord Ordinary is authorized by the Act to remit to the Jury Court *all things* he chooses. It is thus assumed that there is a *new jurisdiction* created, because *that* is necessary to support the argument of the pursuer, founded on other clauses of the Act. But surely your Lordships will not suppose or assume, unless you see it plainly stated in the Act itself, that any *new jurisdiction* has been created by this Act, or that a case, not competent to be tried at all in this Court, can be remitted to the Jury Court by an interlocutor of the Lord Ordinary, against which no representation or petition can be received. It happens in many statutes, particularly in the case of road Acts, that a new jurisdiction is given, and that proceedings which take place under such Acts are not subject to review by your Lordships. I recollect of a case from Renfrewshire of this nature, which came before the Lord Ordinary on the bills by advocacy, and his Lordship sustained the jurisdiction of the justices. Here, in the same way, the Lord Ordinary is assumed in this question to have jurisdiction; and, in the answers, the pursuer admits that the statute is imperative upon the Lord Ordinary to remit to the Jury Court all actions of damages which may come before him, how incompetent soever they may be, by an interlocutor against which there is no remedy. He says, indeed, that, if we can make it appear to the Jury Court that there is a question of law which ought to be decided before going to trial, the Jury Court will *remit back* the process to the Court of Session; but that is not the point here. The point is, Is the Lord Ordinary to be considered as possessed of *absolute* power, and is the constitution

of this Court to be held as completely altered? No doubt the Jury Court have power to remit back the process; but, in such a case, the Jury Court must be presumed to hold that it was originally competent to the Lord Ordinary to remit the cause to them. The questions of law, which they are authorized to remit back for the consideration of your Lordships, are not questions of the *competency of this Court* to entertain the cause at all; they are questions of *law* purely. That is a *wide term* no doubt, but it is not so broad as the other party argue for here. The words used in the Act are "questions of *law or relevancy*." These are the words of the statute, and not the generic term "*law*" only. If used in the broad sense of the term, it would certainly comprehend the word "*relevancy*" as well as "*competency*;" but the phrase is used as the words are placed in the statute, in a limited sense, and is allowed to be such in all cases of reduction, improbation, or implement of a document not probative *per se*, where your Lordships remit the cause to the Jury Court to try the facts, reserving the question of law to be afterwards considered. But the competency of the Court to entertain the cause at all is not there in question; and here you must suppose, if you adopt the argument in the answers, that this statute has been passed to alter the jurisdiction of this Court, instead of trying the competency of causes raised in this Court.

On these grounds we conceive that our argument has not been met in the answers, and that the petition must be held as quite competent.

Mr CLERK.—We do not consider it to be necessary to make any answer to the arguments your Lordships have now heard, because they appear to us to leave the case exactly where it stood before.

Mr MORE.—This is really very extraordinary treatment. I must, however, be allowed to say, that there are some passages in these answers which call for an observation from us, and for severe reprehension by your Lordships. On the last page of the answers but one, your Lordships will find a statement in these terms: "The respondent is ready not merely to *poll the bar*, in general, but to poll the very gentlemen, whoever they may be, with whom the defender has ever consulted, and to prove that even they concurred perfectly with him in holding this petition to be utterly, palpably, and irretrievably incompetent. The truth is, that the plan of giving it in was devised, merely because any thing was better than letting in the light. It was the last desperate effort of a des-



perate defence. It was never expected to be successful; but it was tried as a forlorn hope, merely because it was within the range of possibility, that, by leaving out the clauses of the statute, by exciting alarm about the Jury Court, by giving a partial account of the proceedings before the Lord Ordinary, and by hinting darkly at unintelligible points of law, the Court might be *entrapped* to write upon the petition, and that thus a foundation would be laid for an appeal." I submit to your Lordships that such a statement as this is most reprehensible, especially as coming from Lord Archibald Hamilton.

LORD JUSTICE CLERK.—'Tis a mere flourish of rhetoric, Mr More. Do you really think that such a statement as that could make any impression on the Court?

MR MORE.—I wish to state to the Court something more in addition to what has been already so very clearly argued by Mr M'Neill.

Your Lordships will please to attend to the 2d section of this Act, in connexion with the 3d. By the 2d it is enacted, "That if it shall appear to the parties, or either of them, that there is a question of law or relevancy which ought to be decided previous to the remit of the cause to the Jury Court, it shall be competent for them to state the same orally to the Lord Ordinary." Now, attend to what the Lord Ordinary is empowered to do: "who, if he thinks fit, may give judgment *de plano*, or order pleadings on the alleged question of law or relevancy; and, if he orders pleadings, then the case is to be proceeded in according to the course of the Court of Session; and, *as soon as such question of law or relevancy shall be disposed of*, if matters of fact remain to be proved, the whole process and productions in the case, shall be forthwith remitted to the Jury Court for the purposes aforesaid." Here your Lordships have a section, contemplating the case, that parties, or either of them, come forward and *state*, that here is a point of law which ought to be decided previous to the cause going to the Jury Court. The Lord Ordinary must either give judgment *de plano*, or order pleadings, and, *if he orders pleadings, then the cause must be proceeded in according to the course of the Court of Session*. But the gentlemen on the other side say, that the last part of the 3d section of the Act applies to this one; while, at the same time, they admit, that the import of this 2d section is, that no question of law or relevancy however absurd, is excluded from being discussed. The statute certainly meant this,—That, as it was dangerous to trust questions of law to the decisions of the Jury Court,

which is not properly a court of law, the Lord Ordinary may take them up, and determine them, or send the process to the Jury Court, if it appear to him that there is no question of law to be determined, or where the party does not state that there was any such. The statute says, (section 3d.) “ It shall be competent to the Lord Ordinary, if it shall appear to him that there is *no question of law*, or relevancy, which ought to be decided previous to the remit of the cause to the Jury Court, forthwith to order such cause to be remitted to the said Court, for the purposes aforesaid : Provided always, that it shall also be competent for the Lord Ordinary, if he sees cause, to *reserve* the alleged question of law for the consideration of the Court of Session, after the matter of fact shall have been found by a Jury.” Now attend to what follows : “ And *in all such cases*, the interlocutor of the Lord Ordinary, ordering the cause to be remitted to the Jury Court, whether with or without a reservation of the alleged question of law, *shall not be subject to review*, by representation, petition, appeal to the House of Lords, or otherwise.”

Now does the other party mean to say, that this declaration that the interlocutor of the Lord Ordinary, “ in all such cases,” shall not be subject to review, covers all the previous sections of this Act? *I say it does not.* Suppose that the Lord Ordinary, on hearing the parties, should *order memorials* upon the question of law stated to him, and that upon *advising these memorials* he *remits* the cause to the Jury Court,—Will the other party tell me, that the cause will *then* be proceeded in *according to the course of the Court of Session*, if, under this 3d section of the statute, the party is cut out from all review of that judgment of the Lord Ordinary, either by representation or petition? For, if you give effect to the conclusion of this 3d clause of the Act, in reference to the procedure under the 2d, you would cut the party out of his legal right of review of a judgment of the Lord Ordinary, after advising the question of law on written pleadings. This is a question of very great importance ; because, if this construction of the Act is to be adopted, you would cut out a litigant from that benefit which the statute meant to provide. No other construction than this can be put upon the Act, which seems to have been framed with the greatest anxiety and care, in order to guard against rash remits to the Jury Court. The Lord Ordinary is entitled, and *should* give his judgment in all cases, before pronouncing an interlocutor not subject to review ; but in every case where *the parties require* a judgment on the point of law, the Lord Ordinary is not authorized by the Act to remit the cause to the Jury Court, *until* the question of law shall have been decided in this Court, according to the ordi-

nary course of your proceedings ; so that I humbly conceive the matter is not quite so clear as the other party affects to consider it. If I am right in the view I have taken of the Act, a party would be deprived, in every case, of the benefit of review of a judgment of the Lord Ordinary remitting to the Jury Court. It is surely not the meaning of the statute to cut out the party in this way of his legal right of review. Even the "marginal notes" upon the Act, though not of much use in general, are of consequence here. On the 1st section, the note is, "Certain actions to be sent to the Jury Court." On the 2d section, "*Questions of law reserved for the Court of Session.*" And on the 3d section, "*Lord Ordinary to decide as to question of law.*"

But there are many Acts of Parliament which have been passed that exclude the jurisdiction of your Lordships, as much as this Act establishing the Jury Court does. For example, the Act regarding the form of proceeding by bill of suspension and by bill of advocacy from inferior courts. I refer your Lordships to the case of Dawson against Allardice, decided 3d February 1799. In this case, the Court determined, that the interlocutor of the inferior judge would be final, if any thing had been *omitted* by the party advocating, which was required by the statute. Can it be doubted here that something *has been omitted* to be done, which is pointed out and *required* by the Act? The Act says, that the Lord Ordinary, "if he thinks fit, *may give judgment de plano, or order pleadings* on the alleged question of law or relevancy; and, *if he orders pleadings*, then the case is to be proceeded in according to the course of the Court of Session; and, as soon as such question of law or relevancy shall be disposed of, if matters of fact remain to be proved, the whole process and productions in the case shall be forthwith remitted to the Jury Court for the purpose aforesaid." The object of the Legislature clearly was to bring all actions of damages, such as the present, in which there was any point of law to be determined, under the review of this Court, previous to their being sent to the Jury Court for trial. The Lord Ordinary must pronounce a judgment when required to do so by the party, stating the point of law, and is not entitled to write, "having heard parties' procurators, remits this process to the Jury Court." If he hears the parties' procurators, or allows a pleading on the question of law, the Lord Ordinary is *required*, by the Act, *to pronounce a judgment*, which can be brought under his own review by a representation, and before your Lordships by petition. But, if the Lord Ordinary simply "remits this process to the Jury Court," *as of his own accord, and without having heard parties' procurators on the point of*



*law*, that is not disposing of it by a judgment, and in that case the remit will be final. The other party met me in the Outer House *on the point of law*, and we said to the Lord Ordinary, "You have no power to remit this cause to the Jury Court without previously deciding the point of law;" and yet the Lord Ordinary remitted the cause to the Jury Court *without pronouncing judgment*. The Act of Parliament has conferred a most dangerous power on the Lord Ordinary, if the meaning of it shall not be held by your Lordships to be as I have stated it. I submit to your Lordships that, on *the competency of the action*, I am entitled to have a judgment of this Court; and that all questions of law shall be disposed of by this Court previous to our being sent to the Jury Court. I regret that I have occupied so much of your Lordships' time; but this is an important case to litigants in general. It is most important to my client. It is a mere joke to state, that we have our remedy in the Jury Court. No lawyer can there open his mouth to state *what law* gives rise to an action of damages. The Judges of that Court have no power to inquire *into the law*. The Jury Court merely gives its verdict *on the facts*, and assesses the damages; and, this being done, I defy the wit of man to get redress, in that Court, for any wrong done to him in refusing to hear his legal pleas. It is a subject of the utmost importance to the law of this country that a libel, craving damages, shall be *competently laid* before being sent to a Jury for trial.

MR MONCRIEFF.—There is only one thing in Mr More's statement which I think it worth while to notice;—and it is this, —that the Jury Court *is not a court of law*. We know that. But it is a mistake to say, that they are not entitled to consider questions of law, for the Judges of the Jury Court *have* the power of considering *any question of law* that may occur upon the trial; and they *direct the Jury in points of law*, when necessary. This is clearly shewn by the 17th section of the statute, by which it is enacted, "That, if the motion for setting aside the verdict be founded on the *misdirection* of the Judge at the trial *in matter of law*, or on the undue admission or rejection of evidence, it shall be competent to the party against whom judgment is given by the Jury Court, to tender a bill of exceptions to such judgment, in the same manner as at trial." And thus it is always in the power of a party to get a judgment, both of this Court and also of the House of Lords, if he pleases, *on every point of law* he can possibly bring forward.

**LORD GLENLEE.**—What has now been urged by the counsel for the defender Stevenson, has no proper reference to the case before us. There may be questions, as to which this Court may not be competent, and in which they cannot judge at all, having no original jurisdiction; and I must beg to be off from pronouncing any judgment as to any case of competency, which is not the case immediately before us. The counsel has argued a hypothetical case; but I shall not enter upon it. The sole question before us is, Whether is this petition to be received or not? In judging of this question, I must proceed as if I were satisfied of the allegations in the petition being true; and, in considering the reasonableness of the demand made by the petitioner, I must suppose them to be true. Holding them to be true, still this is a petition that your Lordships cannot receive. He must be a violent petitioner indeed, if he can suppose otherwise. I can hardly entertain the idea that he does. This would be clearly a competent petition, if it were a case of damages for breach of bargain, as supposed in the petition, where no loss was alleged to be sustained; and it would be the same, if the original action had been laid by the pursuer Lord Archibald Hamilton, as in the present libel, but claiming *only L. 20 of damages*. Such an action could not be entertained in this Court at all, being under the requisite amount; and the remit of such action to the Jury Court would be plainly inept. The same thing would hold in the case of a suspension of a charge given by a minister for payment of stipend, on the ground that he was a bad preacher, and neglected his duty in other respects;—or, if it were an action at the instance of the heritors of a parish against their minister for not preaching at all, and claiming the hire of a horse to enable them to go to another parish to attend divine service. Such an action could not be sustained by your Lordships, any more than you would entertain an action at the instance of a man against his wife for not going to bed with him. The statute never intended to sustain actions of damages of such a description. But to hold that the Act of Parliament renders a remit by a Lord Ordinary unalterable, if the Lord Ordinary does *rashly* exercise his discretion, is more than I am prepared to say. Yet still we must suppose, if we entertain this petition, that the Lord Ordinary, in a case where he had *no power at all*, had remitted to the Jury Court. We are told he has done this under the words of the Act of Parliament; and it is said there is here a question of law,—the competency of the action,—which should previously have been decided. It may be so,—there may be many nice questions of law which may arise, though not necessary to be decided before trial. The question of *competency* was once disputed

as being a point of law. In the general case, though the question of competency be a question of law, it is, really and truly, no more than a question as to what the *terms of the libel* are. It is a mere *question of fact*, viz. What says the Act of Parliament, and what does the libel say? No man of a sound judgment can say that this is a *question of law*. I do not admit *ex necessitate*, that this action falls under the words of the statute, though it appears to me that it does so. In all those actions specified in the Act, the Lord Ordinary has a power to *reserve* the questions of law. Now, what sort of an interlocutor would it be, if the Lord Ordinary were to reserve the question of competency of the action for future consideration, after *determining the question of competency, by remitting to the Jury Court*? What sort of an interlocutor would it be, were the Lord Ordinary to remit to the Jury Court, reserving for future consideration, whether the action, as laid, could be at all entertained or not? I cannot suppose this to be the meaning of the statute. As well could I suppose that the Legislature intended to establish the Jury Court for the dispensation of “Jeddart justice,—hang first and try afterwards,”—as to suppose this. It would be improper to say this against this Act of Parliament; but I must say, that the petitioner’s argument necessarily implies, on the one hand, such a degree of absurdity, or, on the other, is a mere matter of spite,—That no remit shall be made, unless where there is no objection in point of law to the competency of the action, or otherwise, that could not be maintained in this Court. I am far from supposing that no case is likely to occur, in which *an objection may not be taken* to the action; but here you have a petition which supposes that there is *no action competently* in Court, and yet it prays your Lordships that *the process should be dismissed*. You are not asked to pronounce a *different judgment* from what the Lord Ordinary has done, but to *dismiss* the process. What judgment your Lordships are to give in this case, I cannot well say. I cannot consent to a judgment finding that there is no action which this Court has jurisdiction to determine. Whatever judgment you pronounce which does not settle that point, I for one will acquiesce in. I have no doubt upon the point, that there is no incompetency in the original action; but this petition is *funditus* erroneous. The action is competent, and if we consider what the petition states as true merely, and not what admits of probability, there is nothing in it which can prevent your Lordships from finding that the action is competent. I remember a case where a variety of proceedings took place, both in the Outer-House and also here, in which your Lord-



ships found the whole to be incompetent, and dismissed the action.

LORD ROBERTSON.—The meaning of this Act is, that a judgment by the Lord Ordinary remitting the cause to the Jury Court, *without pleadings, shall be irreversible*. It bears, Section 2d, “If it shall appear to the parties, or either of them, that there is a question of law or relevancy which ought to be decided previous to the remit of the cause to the Jury Court, it shall be competent for them to state the same orally to the Lord Ordinary, who, if he thinks fit, may give judgment *de plano*.”—Section 3d, “And in all such cases, the interlocutor of the Lord Ordinary ordering the cause to be remitted to the Jury Court, whether with or without a reservation of the alleged question of law, *shall not be subject to review*, by representation, petition, appeal to the House of Lords, or otherwise.” These words are very strong, and I am bound to give effect to them, but not so far as is contended for in the answers, “That, if *the most incompetent action of damages that is conceivable* were to be remitted, *without written pleadings*, by a Lord Ordinary to the Jury Court, that remit could not, under this statute, be petitioned against.” When the action is clearly incompetent, no judgment can be pronounced by a Lord Ordinary which would not be subject to review by this Court. Some cases have been put by my Lord Glenlee to this effect, and in addition to these I may refer to the case of *a foreigner*, who is not subject to the jurisdiction of the Court of Session, and against whom no action could be entertained in this country. It was not the intention of the Legislature that such cases should be brought under the operation of this Act; but I will not enlarge upon these cases, as they do not apply to the case before us; because, were the Lord Ordinary to pronounce an interlocutor in a case where he had no proper jurisdiction, that interlocutor may be reviewed by your Lordships; yet if he has a jurisdiction, and remits a cause to the Jury Court, his interlocutor, however erroneous, *remains irreversible*, and we have no power of reviewing it. The object of the statute is quite clear, that the judgment of the Lord Ordinary should be irreversible, however erroneous it may be. There are several instances of Acts having been passed, containing similar clauses to the present. In the cases of Acts appointing trustees on the high roads, a jurisdiction is vested in the Quarter Sessions, and the judgment of the Quarter Sessions in regard to the matters committed to them by the Act is declared to be final, and not subject to review; and yet, where an action has been brought into this Court against the trustees, complaining that

they had exceeded their powers, this Court has sustained its jurisdiction so as to entertain the complaint, but not where it was shewn that the matters complained of were clearly within the power of the trustees to do. There is no doubt that it is quite competent here to the Lord Ordinary, under the powers given him by the statute, to discuss every incidental question of law or relevancy that may come before him; and, in the cases pointed out by the statute, this Court has no power at all to review a judgment of his, remitting to the Jury Court.

LORD CRAIGIE.—It appears to me, that the competency of this petition depends upon the competency of the original action. At first, when this petition was moved, I thought there might be a plea as to the competency of the action, so far as the summons concluded for damages that *might* be sustained. Supposing this to be an action of damages which did not contain an allegation that damage had actually been sustained by the pursuer, but only that he *might* have sustained damage, by the publication in question, it is clear, that this would not be an action which could be received here. There are cases, indeed, where reparation may be competent, not only for *pecuniary* reparation for *personal* injury sustained, but also *in solatium* for injury done the *feelings* of the party. I would not say that such actions are not competent; they must, however, be judged of by their own peculiar circumstances. When the petitioner says, that in all actions of damages, the libel must be such as could be entertained by your Lordships, he overlooks the terms of the present libel. In this summons, we have quite a sufficient conclusion for damages, not only for patrimonial loss, alleged to be sustained by the attack on the pursuer's character specially libelled, but also for reparation in money, for the wounded feelings of the individual whose conduct has been animadverted upon in this newspaper. Therefore, I will not say that the original action is incompetent; and if it be competent, the Lord Ordinary was justified in making this remit.

LORD BANNATYNE.—The only question before us, regards the competency of this petition, under the Act. I cannot deny but that the Act of Parliament is very clear and express, that wherever an action is brought in this Court, on account of *injuries to the person*, whether *real* or *verbal*, as assault or battery, libel or defamation, and so forth, when the conclusion is for *damages* and *expenses* only, all the regulations and declarations of the Act, in the clauses referred to by the counsel for the parties, apply. I ask myself no other

question but this, Is this such an action as is here described in the Act? and, if it is, then all the objections in point of law or competency, must be discussed before the Lord Ordinary, and before him alone. His Lordship considers the objections to the action, and disposes of them, immediately, by pronouncing his judgment *de plano*, or he orders pleadings; and if he orders pleadings, then he makes avizandum with the cause, and pronounces his judgment at leisure, and in that case, there will be room for a representation and a petition; but, if his Lordship does not do this, but disposes of the question *de plano*, then it is declared by the Act, that his interlocutor, remitting the cause to the Jury Court, shall not be subject to review, either here or elsewhere. The party is not, however, precluded thereby from his legal pleas. The questions of law are reserved to the party in the Jury Court, and he may even have them decided by the House of Lords, upon an appeal. It appears to me, that wherever there is a competent action, and the Lord Ordinary remits *de plano*, his interlocutor is not subject to review, under this Act.

LORD JUSTICE CLERK.—I concurred with your Lordships in desiring to see an answer to this petition, as to the competency only; and I mean to confine myself to the case before us, viz. *whether this petition* of the defender, Stevenson, against the interlocutor of Lord Pitmilley, remitting the process brought against him to the Jury Court, *is competent*, and can be entertained by your Lordships. I beg leave to say, after a full consideration of the Act of Parliament, and the different clauses of it, I have become quite clear in my opinion, that *the 15th section* of the Act quoted in the answers, *does not apply to this case*; as was found by your Lordships in the case of Tennant and Company, which was before us the other day. That section applies to the special case of your Lordships, the Lord Ordinary, or Judge of Admiralty, *ordering a trial by jury*, and to *that alone*. But, laying aside that section of the Act altogether, and considering the 1st, 2d, and 3d sections of the Act, I have formed a clear and decided opinion on the case before us, that this is an *incompetent* petition, and cannot be received by this Court. I do not mean to give this opinion, in reference to any other cause than the case before us; and I desire it to be distinctly understood, that I am now giving no opinion on this Act in reference to any other cause where different circumstances may warrant a different conclusion.

I take the case to be this: In terms of the 1st section of this Act, an ordinary action is brought into this Court, and enrolled in the rolls of the Lord Ordinary in the Outer-



House: That that action concludes for reparation and damages for a verbal injury, or injury sustained by means of a libel; the words of the summons are—"for *the gross injury he has already sustained*, or might have sustained, in consequence of the *wanton, malignant, unjust, and calumnious charges, insinuations, and aspersions* thrown out against him, and *printed and published* in manner above mentioned:" That that action concludes for damages and expenses only, and, in short, is correctly and specifically libelled, under the very terms and description given in this Act, which declares in the 3d section, that, "in all such cases, the interlocutor of the Lord Ordinary, *ordering the cause to be remitted* to the Jury Court, whether with or without a reservation of the alleged question of law, *shall not be subject to review, by representation, petition, appeal to the House of Lords, or otherwise.*"

When the pursuer of such an action comes before the Lord Ordinary, he has only to notice to his Lordship, that the action is of this description, and to say, "My Lord, *do your duty*, by remitting to the Jury Court." An objection is taken orally, to this being done—no matter whether by one or more Counsel—no answer is made to it—no pleadings are ordered—there is no debate,—and, therefore, there is no question as to *pleadings* here, whether oral or written; but after stating the nature of the action, and craving a remit,—and no doubt there was a question of competency stated, as arising on the face of the summons, but no rejoinder on the part of the pursuer, and the Lord Ordinary, thereupon, stated it to be his *bounden duty*, and that he *must remit* the cause to the Jury Court. Your Lordships have *no judgment* here. What *judgment* could you have? The Lord Ordinary hears an objection stated to what he was going to do. He hears all that is thus stated, sitting and judging under the 1st clause of the statute, which says,—“The Lord Ordinary of the Outer-House, before whom such processes shall be enrolled, *do remit*, and he is hereby authorized *and required*, after defences are lodged, *to remit* the whole process and productions *forthwith* to the Jury Court in civil causes.” And he *does remit* accordingly; and without reserving, which he might have done under the 3d section of the Act, any question of law or relevancy, he remits *de plano* to the Jury Court. Now, in consequence of this remit, the action does go to the Jury Court, and certain steps of procedure take place there. This petition is nothing more or less, than *a complaint against the Act of Parliament itself*. It is not a petition *in the cause*; and there is *no process* here, at least *properly* before us, for it is only by being *borrowed up from*

the clerks of the Jury Court, that it now lies on your table. It has *not been remitted back* to us by the Jury Court, to whom it was regularly remitted by the Lord Ordinary ; and yet you have here a petition, praying you to review that interlocutor. I beg leave to state, that I entertain no hesitation whatever in saying, that here there is no question as to *excess of power* on the part of the Lord Ordinary. There is no legal presumption, that he has exceeded his power, or done what he was not authorized to do by the Act. If there were, your Lordships would be entitled to review his judgment, but that is not the case here. On looking at the procedure that has taken place, I find that the Lord Ordinary has regulated his proceedings by a minute and precise adherence to the terms of the Act. Can your Lordships, therefore, receive this petition, even to the effect of *writing upon it*, as if this remit were an ordinary interlocutor pronounced by the Lord Ordinary ? I am clear you cannot, nor by *writing on any part of the record*. *The process is not here* but in the Jury Court. This is one of those cases, in which no argument worth listening to can be used. If your Lordships look into the Act, and to the case before us, you can have no difficulty at all in determining this question. Cases have been stated by some of your Lordships, where another course of proceeding would be competent, if there was incompetency in the original action. But I have great doubts of the competency of our entertaining a petition on any such grounds, *under this Act of Parliament* ; because if the action comes into the rolls of the Outer-House, and is an action of the nature of any of those described in the 1st section of this statute, and if it be remitted to the Jury Court by an interlocutor of the Lord Ordinary, which makes no mention of pleadings of any kind, and *if written pleadings have been avoided*, I do not see how that remit can be recalled by this Court. The cases put by your Lordships are extreme cases. You must suppose that the objections to the competency of the action have escaped the notice, not only of the Lord Ordinary, but of the party or parties, or either of them ; that no one has discovered them, and then that a remit is made by his Lordship of an incompetent action. But supposing all this, still I do entertain great doubts, (though my opinion here is of no consequence, such a case not being before us), that although there may have been a *want of observation* on the part of the Lord Ordinary, and even a degree of *rashness* on his part in making the remit, whether the remedy is by petition to this Court, and is not rather to be found *in the Jury Court*, under the provisions of this statute, and *in it alone*. Even if this were an extreme case,—that it were a case where the original action was not compe-

tent in this Court,—the remedy is in the Jury Court. Is it not competent to bring such an objection to the competency of the action under the notice of the Jury Court? The law presumes, and this statute presumes, that the Judges of that Court will do their duty, and will remit back the process to this Court, to consider the question of competency stated by them. When your Lordships have heard such an opinion avowed, as that a case such as the present must be viewed in the same light with an ordinary proceeding before the Lord Ordinary, *allowing a proof before answer* in an ordinary action, I must enter my *caveat* against such a doctrine. I have no doubt whatever, that this is an incompetent petition, and that your Lordships cannot write upon it. What I mean by not writing upon it, is, that you cannot write *upon any part of the process*, which is only here by being borrowed from another Court. I see no objection to writing on this petition,—“Refuse this petition as incompetent.”

LORD GLENLEE.—We may do so, but we should at same time say, that there has been no excess of power on the part of the Lord Ordinary.

LORD JUSTICE CLERK.—(Addressing himself to the Clerk), “Find the procedure before the Lord Ordinary warranted by the Act of Parliament, and refuse the petition as incompetent.”

Mr JEFFREY.—In order to avoid mistakes, it would be desirable to know, whether this is to be considered as the *unanimous* judgment of your Lordships.

LORD JUSTICE CLERK.—*It is so.*

The Lords refused the petition as *incompetent*.

Of this date (21st January 1822) a motion was made in the Jury Court for an order on the defender to put in answers to the summons, which had, as before noticed, been held as a condescendence for the pursuer; and an order was made accordingly that they should be lodged in eight days.

Answers were accordingly lodged for the defender as follows :—



*ANSWERS for DUNCAN STEVENSON, Printer in Edinburgh, Defender, to the Summons (held as a Condescendence) of Lord ARCHIBALD HAMILTON, M. P. Pursuer.*

The pursuer has thought proper to hold his summons as a condescendence, and in that shape the respondent is required to answer.

The summons narrates several passages said to have been published in four Numbers of the Beacon. These are alleged to be libels against the pursuer; and it is said, that "one and all" of the statements contained in them are "false, malicious, injurious, and calumnious."

The summons concludes against the respondent as printer and publisher of the Beacon.

The respondent admits that he printed and published the several Numbers of the Beacon libelled on.

The respondent says, that the passages quoted in the summons are not fairly quoted from that paper.

The respondent says, that the inferences or inuendos contained in the summons are unwarrantable and absurd.

It is impossible for the respondent to deal with the general allegations of falsehood and malice contained in the summons; the pursuer must condescend and say what particular statements complained of are false, malicious, injurious, and calumnious. As his allegation now stands, it is a false and calumnious statement that David Walker was the convener of the trades of Crail;—that the pursuer is a friend to the happiness of the lower orders;—that James Wilson was executed at Glasgow for treason;—that the pursuer wrote to the said James Wilson on the subject of the corn laws;—that James Turner was apprehended and imprisoned as a suspected person;—that the pursuer presented to the House of Commons a petition from the said James Turner;—that the said petition was stupid and malicious;—that the conductors of the Beacon "thought it necessary to comment occasionally on the conduct of Lord Archibald Hamilton, and to examine into the real nature of his political character and pretensions," &c. &c. If the pursuer does not mean to contend that all these statements are false, he must give in a specific condescendence, shewing distinctly what he avers to be false, and the respondent will then make specific answers.

In the mean time the respondent avers, and, if his averments are disputed, will prove the following facts, which he calls upon the pursuer articulately to admit or deny.

1. That the pursuer received from David Walker of Crail the letter, of which a copy appeared in No. 16. of the Beacon,

and which gave rise to the observations quoted in the pursuer's summons from that Number of the Beacon.

2. That the pursuer answered that letter.

3. That the late James Wilson, hosier in Strathaven, received letters from the pursuer on the subject of the corn laws.

4. That the said James Wilson read these letters, and showed them on the public streets; and that some of these letters were found by the Sheriff-substitute and others, when they searched Wilson's repositories, after he was apprehended on a charge of treason.

5. That the pursuer received letters from the said James Wilson on the above-mentioned subject of the corn laws.

6. That the said James Wilson was prosecuted for poaching on the domains of the Hamilton family.

7. That the said James Wilson was executed at Glasgow in the year 1820 for treason.

8. That the Magistrates of Hamilton some years ago prohibited a man from lecturing within the burgh; and that the pursuer wrote to the factor on the Hamilton estate, in regard to the conduct of the Magistrates in so doing.

9. That the pursuer presented to the House of Commons a petition from a person of the name of Turner, who had been apprehended and imprisoned as a suspected person during the disturbances in the west country in the year 1820; and that the said petition complained of arbitrary conduct on the part of the Lord Advocate.

*In respect whereof, &c.*

J. S. MORE.

An order being then made in the Jury Court, on the parties, mutually to revise and amend the condescendence and answers; in compliance with that order, the pursuer put in the following revised condescendence.

## IN THE JURY COURT.

LORD ARCHIBALD HAMILTON v. STEVENSON.

*REVISED CONDESCENDENCE for LORD ARCHIBALD HAMILTON.*

1. The Number of the late newspaper called the Beacon, which was published on the 21st of April 1821 (being No. 16.), contains the following letter, or pretended letter, entitled "Burgh Reform," and addressed to the editor of that

paper :—" Crail, 19th April 1821. Sir,—Like many other places, this ancient burgh has been much infested of late with what is called the spirit of reform, that is, with the spirit of idleness, presumption, and discontent. I don't suppose that our reformers are worse than the common run of the fraternity, but they are certainly quite bad enough to account for all the ridicule into which their schemes have fallen. Among us, indeed, a reformer is merely a person who is fit for nothing else ; for every blockhead who is too stupid, or too lazy, to thrive as a tailor or shoemaker, forthwith imagines that the fault lies with the magistrates, or the government, and that matters cannot possibly be set right unless he tries his hand at politics. I verily believe, however, that we should have much less of this nonsense, and that most people would be easily laughed out of it, if it were not for the countenance which it receives from above stairs. Not to go farther, only look to the conduct of Lord Archibald Hamilton, who has been working for years past at this kind of mischief. I don't know what has been his success elsewhere, but I'm sure that in Crail he and his understrappers have caused more harm than ten bad fishing seasons could have done. This Noble Lord calls himself a friend to the happiness of the lower orders. And how does he promote their happiness? Why, by trying to place them at variance with their rulers, and leading them to think of his absurd plans, and of their own imaginary grievances, instead of their useful and honest occupations! The reformers have even been encouraged to adventure on the dangerous use of pen and ink in his service, and to correspond with him with regard to the affairs of the burgh. The person who generally communicates with Lord Archibald is one David Walker, the convener of the trades ; though it may be supposed that he sometimes avails himself of the epistolary talents of his friends. This David is a person of great authority among our reformers ; indeed he may fairly be said to be the James Gibson of the place. He has long been an object of great alarm to his opponents in the burgh ; and I believe few even of his friends approach him without a certain degree of awe. This has been particularly the case since his correspondence with Lord Archibald, for he now thinks himself entitled to maintain as stately an air, and to look as sour and sulky, as the best Whig among them. Of course, Lord Archibald's answers to the letters which are sent to him from this respectable quarter, are generally quite in the common cant which is used on such occasions. They contain a great deal about ' indefeasible privileges,' and ' imprescriptible rights,' and ' the revolution of 1688,' and ' the enlightened Burgesses of Crail ;' and generally very little that any one



here can understand. But they have their effect; for the people are delighted with being noticed in these fine words, and the cause of reform has certainly derived a considerable increase both of numbers and importance from this circumstance. To give you some idea of Lord Archibald's correspondents, I enclose a *fac simile* of one of David's letters, which I got hold of before it left this, and copied by the new lithographic method. I do not pretend to be able to decypher every part of it, but I pledge myself for its accurate resemblance to the original. If this should be doubted, it is in your power to verify it, by appealing either to Lord Archibald or to David himself. I am, Sir, your's, &c. J. C.—P. S. I hope to be soon able to send you one of Lord Archibald's answers, especially as their peculiarities can be shewn without the trouble of a lithographic process."

2. The same number of the said paper then contains a letter, or pretended letter, signed by David Walker; and this letter is followed by certain comments in the following terms: "But it surely ought to be a matter of the deepest self-reproach to Lord Archibald Hamilton, that he has led such persons into this mischievous and extravagant folly. If his Lordship likes to waste his *own* time on burgh reform, let him do so, and he will only be laughed at for his pains; but when he leads men like David Walker to fool away *their* time in such nonsense, he deserves much severer treatment."

3. The 18th Number of the said newspaper, which was published on the 5th of May 1821, contains the following passage: "Lord A. Hamilton's Correspondents.—The following letter on this subject is from a most respectable quarter, and we can pledge ourselves for the perfect accuracy of its contents."—"To the editor of the Beacon. Sir, I concur in opinion with you, that the correspondence between Lord Archibald Hamilton and David Walker of Crail, part of which appeared in your paper, No. 16. does but little credit to either of these parties. David would do more good to himself, and to the burgh of Crail, were he to sit at his loom, or whatever be his occupation, than he can do by setting his neighbour burghesses and himself agog about the 'seat' of the burgh, or any other subject he so imperfectly understands; and they are by no means David's best friends who encourage him in such fooleries. It might be expected that the son of the first peer of Scotland, whose family, only a few generations past, had but one feeble life between them and the crown, and who represents the most populous county in Scotland, would not so far forget his high birth, and lay aside his family pride, as to

correspond with a prattling presumptuous tradesman, so ignorant and illiterate as this convener of Crail evidently appears. But that is not the only instance in which the noble Lord has corresponded with people of low character on political subjects. When his Lordship, and other of the opposition members, were endeavouring to acquire popularity by opposing the corn laws, and when James Wilson, then hosier in Strathaven, who was lately executed at Glasgow for treason, was at the head of a mob of the lowest people in that town, burning the effigies of Lord Castlereagh, and others who differed in opinion from the opposers of these laws, Lord Archibald Hamilton corresponded with Wilson on that subject, though he was then under prosecution at the instance of the Hamilton family for poaching their game. Wilson showed his Lordship's letters, and read them to crowds on the street; and some of these letters were found by the Sheriff-substitute when he searched Wilson's repositories, after he was committed for treason, and I believe they can still be seen in the hands of his widow. This to me seems more improper than even corresponding with David, who holds a sort of office in the burgh of Crail, and who seems to be eagerly looking forward to the 'seat' of the magistracy; whereas James Wilson never held a higher office than preses, or leader, or agitator of the merest rabble in a manufacturing town, about the corn laws, the proceedings of Colonel Wardle, or whatever at the time served to inflame the lower orders; and as he lived on domains of the Hamilton family, and had often invaded their game, the noble Lord must (or might) have known him better than he probably did David of Crail. But his Lordship, and others of his political party, seem willing to open a correspondence with any person who can be prevailed upon to enter into their measures, and to facilitate the views of their party. If David, or Wilson, or any such people, were to presume to write his Lordship on any other subject than politics, they would not be so readily attended to. I have known other instances of that noble Lord corresponding with people of a suspicious cast on political subjects. A few years ago a man of doubtful character advertised a course of political lectures in Hamilton. The magistrates called him before them, and prohibited him from lecturing within the burgh. In a few days afterwards, his Lordship wrote from London to the factor at Hamilton palace, to inquire at the magistrates on what account they had presumed to interrupt this political lecturer. The magistrates pled, that it was because that itinerant had advertised his lecture before asking their liberty to do so; and they were not put to farther trouble on the subject. But when this lecturer, and James Wilson, and their followers,

began in 1819 to talk of dividing large estates, and some of their wives, who were far advanced in pregnancy, boasted that they would lie in, in course of a few weeks, in the palace of Hamilton, the noble family became more alive to their danger, and instructed their factor and the local magistracy to raise and collect a force to protect the palace, and preserve the peace of the county. I am, &c. T. S.—*Clydesdale, May 1st 1821.*”

4. The same 18th Number of the said paper afterwards contains the following passage :—“ We observe, from the report of the proceedings on Wednesday, that Lord Archibald Hamilton, in the dearth of subjects of political interest, has procured (from a person of the name of Turner) a petition, complaining of the arbitrary conduct of the Lord Advocate. It seems that this man was apprehended, and imprisoned for a week, as a suspected person last year, during the disturbances in the west country, and he now applies for compensation on account of the injury which his character has sustained. The means by which he has been induced to do this are, no doubt, quite worthy of the noble correspondent of the Crail Radicals and Strathaven Traitors.” And the above comments conclude thus : “ On this occasion Lord Archibald Hamilton has really chosen his ground singularly ill ; and in doing so, has shewn, either the most lamentable ignorance of the public opinion, or the most extraordinary contempt of it. He ought to know that the conduct of the Lord Advocate at the time he alludes to, was such as has insured the lasting gratitude of the country, and that it has never been called in question, except by the patrons or associates of crimes which could not have been speedily subdued, except by the most remarkable union of firmness and lenity.”

5. The 19th Number, of the said paper published on the 12th of May 1821, contains the following passage :—“ The Lord Advocate and Lord Archibald Hamilton.—We have not for a long time observed any thing more malicious and stupid than the petition presented by Lord A. Hamilton to the House of Commons, in the name of James Turner, who was confined for a few days during last spring, upon a charge of high treason. Every one knows how these petitions are got up ; we shall not therefore insult our readers by an attempt to prove what all of them must know well enough,—that this is in truth the complaint of Lord A. Hamilton himself. This noble person is already well known as one of the drudges of the Whig faction,—as the patron of burgh reform, and in that character the honoured correspondent of David Walker of the royal



burgh of Crail, of whose power of spelling and composition we lately gave a striking example. But we could not have supposed the noble Lord capable of going this length, or of so far degrading himself as to become the patron also of suspected patriots."

6. The defender having been remonstrated with, for his having been accessory to the publication of these defamatory articles, and required to give up the author, as appears from the correspondence between him and Alexander Young, inserted in Nos. 22. and 23. of Beacon, instead of doing so, repeated and aggravated the previous statements by the following passage, which occurs in the 22d Number, published on the 2d June 1821 :—" Lord Archibald Hamilton v. The Beacon. Our readers must have observed that we have thought it necessary to comment occasionally on the conduct of Lord Archibald Hamilton, and to examine into the real nature of his political character and pretensions. Every one will allow that, if it is right that public men should be subjected to such an operation at all, this noble Lord is one of the fittest subjects for it. He has been unceasing in his endeavours to bring himself into notice, and certainly not at all scrupulous as to the means of doing so."

7. The whole of the foresaid passages are of and concerning the pursuer ; and they are all, in their general strain and object, defamatory of him, and are calculated to hold up his character and conduct to discredit and contempt, and to bring his loyalty, and attachment to his Majesty and to the constitution, into doubt and question.

8. Independently of this being the plain general import and effect of the passages, they are calumnious, more particularly, in so far as they directly accuse the pursuer of presumption,—of purposely exciting groundless discontent among the lower orders,—of being a worker in public mischief,—of being an enemy to the happiness of the lower orders,—*of trying to place them at variance with their rulers*,—of leading certain persons "*into mischievous and extravagant folly*,"—of corresponding, from improper and unconstitutional purposes, "*with people of low character on political subjects*,"—of opposing bills in Parliament, merely in order "to acquire popularity,"—of being "willing to open a correspondence with *any* person who can be prevailed upon to enter into his political measures,"—"of being regardless of his high birth,"—"of corresponding with people of a suspicious cast on political subjects,"—"of having procured from a person of the name of Turner, a petition com-

plaining of the arbitrary conduct of the Lord Advocate,"—of having "induced" Turner to apply to Parliament,—of being "the noble correspondent of Crail Radicals and Strathaven Traitors,"—of having called in question the conduct of the Lord Advocate, although the conduct of that public officer "had never been called in question, except by the patrons or associates of crimes which could not have been speedily subdued, except by the most remarkable union of firmness and lenity,"—of having presented to the House of Commons a petition, in the name of "James Turner," who was confined for high treason, which was "malicious," and was not the complaint of Turner, but was "in truth the complaint of Lord Archibald Hamilton himself,"—of "*so far degrading himself, as to become the patron of suspected patriots,*"—of being "unceasing in his endeavours to bring himself into notice, and certainly not at all scrupulous as to the means of doing so,"—and, in general, being the avowed and wilful patron and encourager of all those of the lower ranks, who were disposed to commit offences against the constitution of their country.

9. The whole of these statements, assertions, and insinuations, are false and malicious.

10. The pursuer has suffered, by these false and malignant calumnies, great injury in his character, interests, and feelings.

11. The defender was the printer and publisher of the fore-said Numbers of the Beacon, and continued to print and publish that newspaper, at the date of all the Numbers that are hereafter to be mentioned.

12. The defender was warned of the injurious and defamatory nature of the foresaid articles, and was required to give up the name of the author, or to insert a contradiction of them in the Beacon. But he not only refused to do either the one or the other, but evinced the malice from which he, or those with whom he was in combination, had all along acted, by repeating his injurious statements, and by boasting of what he had done.

13. He did so in the 22d Number of the Beacon, in the following terms;—"In the way in which we have treated Lord Archibald Hamilton, we have therefore never had the slightest hesitation as to the propriety of our conduct; but we confess, we have often doubted whether we could inflict any chastise-

ment, which would be felt by him as we wished it to be ;"—and afterwards :—" Let the noble Lord beware ; we have information on these and many other points which we may be induced to bring forward ; and which would shew him that our forbearance has hitherto been, at least, equal to our severity."

He did so in No. 23. of said paper, where it is said, that a letter from the pursuer's agent had been handed over to *the presiding power of the Beacon* ; and then there follows an article in these terms : " Lord Archibald Hamilton v. the Beacon.—We directed our printer to keep the above title ready set in types, for at least six months to come, never doubting that the kindness of the noble Lord would give us ample materials for a column or two every week during that period."

He did so in No. 24. in the following terms, after having inserted the pursuer's summons against him :—" Most people will be sufficiently astonished at this foolish proceeding, (the summons), knowing what they already do ; and certainly their astonishment will not be diminished when they learn, that *we are ready to prove the truth* of every syllable which Lord Archibald has quoted from us, by the most unquestionable legal evidence. If it is required, we can prove a great deal more. Lord Archibald Hamilton will discover in due time, that our information is of a very different kind indeed from that which he is accustomed to act on. I am ready to meet his Lordship on them, to go to proof on every thing I have stated in that communication."

He did so in No. 25. where it is stated, that, " in publishing Lord Archibald's summons last week, it was by no means our chief intention to turn, or rather to increase the general laugh against him, as we find we have done." And again, " Every thing which we have stated concerning Lord Archibald Hamilton, either on our own authority, or on that of our correspondents, or from hearsay, is true." And again, " In every thing we have said about the foolish Lord, we have kept exclusively to his public character ; and every one who knows any thing about him, must be convinced, that if we had been actuated by private malice we would not have done so."

14. Not content with publishing the foresaid false and defamatory articles in the newspaper, copies of the foresaid Numbers which regarded David Walker, were distributed *gratis* in the burgh of Crail, and copies of some of the foresaid Numbers were distributed *gratis* in the village of Strathaven. This was done *gratis*, and solely with the purpose of



more deeply and extensively injuring the pursuer; and it was done by the defender, either directly or indirectly.

The defender calls upon the pursuer, to admit or deny the accuracy of certain averments. The pursuer having every desire to admit whatever he knows to be true, hereby makes the following answer to this requisition:—

1st, He admits, that he, officially, as Chairman of the Burgh Committee, received a letter from David Walker, of which a copy was published in the 16th Number of the Beacon: but whether it was this letter which *gave rise* to the commentaries in the newspaper, or not, he cannot say. His opinion is, that it did not; but that the letter was published for the very purpose of affording a pretence for the effusions of a malignant spirit.

2d, The pursuer admits, that he, as Chairman of the Committee, sent one letter in answer to David Walker; but this answer was purely official, and was confined to the proper business of the Burgh Committee.

3d, He admits that he wrote two letters, and no more, one in 1805, and one in 1815, to James Wilson, hosier in Strathaven, which he presumes that Wilson received. Wilson had previously written on both of these occasions to the pursuer, as Member of Parliament for Lanarkshire, wishing him to present a petition to the House of Commons on the subject of the corn laws. The pursuer has always thought it a part of his public duty to present all petitions to the House of Commons, complaining of real grievances, provided they be respectful to the House and to the law; and he was so well known to be particularly scrupulous on this last point, that it stands recorded in the minutes of an association at Hamilton, which was formed for the sake of petitioning Parliament for the improvement of the corn laws, that he would present no petition unless the members “conducted themselves in a legal and constitutional manner,” and disconnected their proceedings altogether with every thing “like turbulence or disaffection to government.” The two letters which he wrote to Wilson merely repeated these sentiments, by offering to present the petitions, if they were unexceptionably expressed, and rather dissuading their being persisted in.

4th, The pursuer knows nothing about these statements, and can neither admit nor deny them. If Wilson did read the letters on the public streets, he had no authority from the pursuer to do so.

5th, The pursuer admits that he received two letters, and no more, as above explained, from Wilson. Both of these were written by Wilson, as preses, or other office-bearer of a

meeting of the inhabitants of Strathaven, and were sent to the pursuer as Member of Parliament for the county within which Strathaven lies.

6th, The pursuer does not know whether this be true or not. The pursuer has understood, that a person called James Wilson, was executed in Glasgow in the year 1820, for high treason; and he believes that this was the same individual with the James Wilson who had written to him some years before. But whether or no this be the case, he really cannot say; for he had no personal acquaintance with James Wilson, who wrote to him, or with the traitor.

8th, The pursuer has hardly any accurate recollection of this matter. But, so far as he does remember, the facts are, that several years ago, a person was prevented from lecturing at Hamilton on political subjects, by the Magistrates, because he had not previously got their leave. He wrote to the pursuer, complaining of this; and the pursuer wrote to the resident factor on the Hamilton estate, to inquire into the accusations. The pursuer cannot recollect whether he got an answer that satisfied him, or heard no more of the matter.

9th, The pursuer admits that he presented a petition from a person called Turner, who had been apprehended, as he said, unjustly; but he does not recollect accurately, whether the petition "complained of arbitrary conduct on the part of the Lord Advocate," though he admits, that it contained statements which blamed criminal proceedings connected with his Lordship's department. This petition was only presented by the pursuer, at the request of Turner himself, and in place of Mr Maxwell, the Member for Renfrewshire, who had first undertaken to present it. The pursuer mentioned the nature of the petition to the Lord Advocate, before he presented it; and, according to the best of his recollection, even gave the petition to his Lordship, some short time before he presented it, that he might be prepared to state his defence.

*In respect whereof, &c.*

To this condescendence, the defender, of this date, after several renewals of the order upon him, put in the following answer.

*ANSWERS for DUNCAN STEVENSON, Printer in Edinburgh,  
Defender, to REVISED CONDESCENDENCE for  
LORD ARCHIBALD HAMILTON.*

Art. 1. and 2.—The passages set forth in these articles of the revised condescendence are imperfect quotations from No. 16. of the Beacon.

Art. 3. and 4.—The passages set forth in these articles of the revised condescendence are quotations from No. 18. of the Beacon.

Art. 5.—The passage set forth in this article of the revised condescendence is an imperfect quotation from No. 19. of the Beacon.

Art. 6.—The pursuer should have quoted the correspondence referred to in this article.—The passage set forth in this article is an unfair and imperfect quotation from No. 22. of the Beacon.

Art. 7.—The respondent denies that the passages in the Beacon, from which quotations are given in the preceding articles of the revised condescendence, possess the character ascribed to them in this article.

Art. 8.—This article consists of statements and inferences, in no respect warranted by any thing contained in the passages libelled on and previously recited. These statements and inferences are here attempted to be borne out by partial garbled quotations, by joining part of one sentence to part of another, and, in short, by the most extravagant and absurd violation of every rule which ought to be observed.

Art. 9.—This article sets forth, that “the whole of *these* statements, assertions, and insinuations, are false and malicious;” meaning thereby the statements, assertions, and insinuations contained in art. 8. of the revised condescendence, and which are purely the invention of the pursuer himself. The statements actually contained in the Beacon are not “false and malicious.”

Art 10.—In this article the pursuer asserts, that he has suffered by the calumnies invented by himself, as set forth in art. 8. The respondent cannot answer this.

Art 11.—The respondent was the printer and publisher of the Beacon when the Numbers libelled on were published.

Art. 12.—The respondent denies that the pursuer ever made any communication to him of the nature described in this article. The pursuer’s agent, Mr Alexander Young, W. S. did indeed write to the respondent, that “some of Lord Archibald Hamilton’s friends” had observed some obnoxious articles regarding his Lordship in the Beacon, and desiring to know whether the respondent would give up the name of the author, or insert a contradiction of these articles. The respondent, before answering that question, desired to be informed whether the pursuer himself was a party to the inquiry, and what were the particular articles alluded to; but Mr Young declined to give any information on either of these points. The correspondence is printed in No. 22. and 23. of the Beacon, and the pursuer is called upon to produce the



original letters sent to Mr Young, his mandatory in this action. The rest of this article is too vague.—The respondent can therefore, at present, only give to it a general denial.

Art. 13.—This article is irrelevant and inadmissible. The pursuer here, for the first time, brings forward a variety of passages, said to be from different Numbers of the Beacon, not libelled on.—The pursuer is not entitled to found upon articles not alluded to in his summons. If the articles alluded to in the summons are not libellous by themselves, the pursuer is not entitled to try to make them so by coupling them with other passages, or other Numbers, or other newspapers. Moreover, the quotations in this article of the revised condescendence are not fairly and accurately given.

*In respect whereof, &c.*

The term being now about expiring, it was found impossible to get the issues prepared for some months.—At last, of this date, (5th June 1822), the issues were adjusted and settled by the Lord Chief Commissioner of the Jury Court, as follows :—

*Jury Court, June 5. 1822.*

*ISSUES in the cause in which the Right Honourable ARCHIBALD HAMILTON, commonly called Lord ARCHIBALD HAMILTON, second Son of the late ARCHIBALD Duke of HAMILTON and BRANDON, and Representative in Parliament for the Shire of Lanark, and ALEXANDER YOUNG and ROGER AYTOUN, Writers to the Signet, his Mandatories, are Pursuers; and DUNCAN STEVENSON, Printer in Edinburgh, is Defender.*

It being admitted that, during the months of April, May, and June, in the year 1821, the defender was printer and publisher of a certain periodical paper called the Beacon :—

It being also admitted, that the Sixteenth Number of the said Paper was printed and published at Edinburgh on the twenty-first day of April, in the year aforesaid,—WHETHER the said Number contains the following words and figures : ‘ Burgh Reform.’ ‘ *Crail*, April 19. 1821. Sir,—Like many other places, this ancient burgh has been much infested of late with what is called the spirit of reform, that is, with the spirit of idleness, presumption, and discontent. I don’t suppose that our reformers are worse than the common run of the fraternity, but they are certainly quite bad enough to account for all the ridicule into which their schemes have fallen. Among us, indeed, a reformer is merely a person who is fit for no-

thing else, for every blockhead who is too stupid, or too lazy, to thrive as a tailor or shoemaker, forthwith imagines that the fault lies with the magistrates, or the government, and that matters cannot possibly be set right unless he tries his hand at politics. I verily believe, however, that we should have much less of this nonsense, and that most people would be easily laughed out of it, if it were not for the countenance which it receives from above stairs. Not to go further, only look to the conduct of Lord Archibald Hamilton, who has been working for years past at this kind of mischief. I don't know what has been his success elsewhere, but I am sure that in Crail he and his understrappers have caused more harm than ten bad fishing seasons could have done. This Noble Lord calls himself a friend to the happiness of the lower orders. And how does he promote their happiness? Why, by trying to place them at variance with their rulers, and leading them to think of his absurd plans, and of their own imaginary grievances, instead of their useful and honest occupations. The reformers here have even been encouraged to adventure on the dangerous use of pen and ink in his service, and to correspond with him with regard to the affairs of the burgh. The person who generally communicates with Lord Archibald is one David Walker, the convener of the trades: though it may be supposed that he sometimes avails himself of the epistolary talents of his friends. This David is a person of great authority among our reformers; indeed he may fairly be said to be the James Gibson of the place. He has long been an object of great alarm to his opponents in the burgh; and I believe few even of his friends approach him without a certain degree of awe. This has been particularly the case since his correspondence with Lord Archibald, for he now thinks himself entitled to maintain as stately an air, and to look as sour and sulky as the best Whig among them. Of course, Lord Archibald's answers to the letters which are sent him from this respectable quarter, are generally quite in the common cant which is used on such occasions. They contain a great deal about "indefeasible privileges," and "imprescriptible rights," and "the Revolution of 1688," and "the enlightened Burgesses of Crail;" and generally very little that any one here can understand. But they have their effect; for the people are delighted with being noticed in these fine words, and the cause of reform has certainly derived a considerable increase both of numbers and importance from this circumstance. To give you some idea of Lord Archibald's correspondents, I enclose a *fac simile* of one of David's letters, which I got hold of before it left this, and copied by the new lithographic method. I do not pretend to be able to decypher

every part of it, but I pledge myself for its accurate resemblance to the original. If this should be doubted, it is in your power to verify it, by appealing either to Lord Archibald or to David himself. I am, Sir, your's, &c. J. C." " P. S. I hope to be soon able to send you one of Lord Archibald's answers, especially as their peculiarities can be shewn without the trouble of a lithographic process." And the following words: " But it surely ought to be a matter of the deepest self-reproach to Lord Archibald Hamilton, that he has led such persons into this mischievous and extravagant folly. If his Lordship likes to waste his *own* time on burgh reform, let him do so, and he will only be laughed at for his pains; but when he leads men like David Walker to fool away *their* time in such nonsense, he deserves much severer treatment." And WHETHER the whole, or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up, the character and conduct of the pursuer to discredit and contempt, and were meant and intended to bring, and do bring, his loyalty and attachment to his Majesty, and to the Constitution, into doubt and question, by falsely and injuriously accusing and representing the pursuer as being guilty of presumption, or of purposely creating groundless discontent among the lower orders, or of being a worker of public mischief, or of being an enemy to the happiness of the lower orders, or of trying to place the lower orders at variance with their rulers, or of leading certain persons into mischievous and extravagant folly, to the loss and damage of the said pursuer.

And it being farther admitted, that the Eighteenth Number of the aforesaid Periodical Paper was printed and published as aforesaid at Edinburgh, on the fifth day of May in the year aforesaid, WHETHER the said paper contains the following words and figures: " Lord A. Hamilton's Correspondents." " The following letter on this subject is from a most respectable quarter, and we can pledge ourselves for the perfect accuracy of its contents."—" To the Editor of the Beacon. Sir, I concur in opinion with you, that the correspondence between Lord Archibald Hamilton and David Walker of Crail, part of which appeared in your paper, No. 16. does but little credit to either of these parties. David would do more good to himself, and to the burgh of Crail, were he to sit at his loom, or whatever be his occupation, than he can do by setting his neighbour burgesses and himself agog about the " seat of the burgh," or any other subject he so imperfectly understands; and they are by no means David's best friends who encourage him in such fooleries. It might be expected, that the son of the first Peer of Scotland, whose family, only a few



generations past, had but one feeble life between them and the Crown, and who represents the most populous county in Scotland, would not so far forget his high birth, and lay aside his family pride, as to correspond with a prattling presumptuous tradesman, so ignorant and illiterate as this convener of Crail evidently appears. But this is not the only instance in which the noble Lord has corresponded with people of low character on political subjects. When his Lordship, and other of the opposition members, were endeavouring to acquire popularity by opposing the corn laws, and when James Wilson, then hosier in Strathaven, who was lately executed at Glasgow for treason, who was at the head of a mob of the lowest people in that town, burning the effigies of Lord Castlereagh, and others who differed in opinion from the opposers of these laws, Lord Archibald Hamilton corresponded with Wilson on that subject, though he was then under prosecution at the instance of the Hamilton family for poaching their game. Wilson showed his Lordship's letters, and read them to crowds on the street; and some of these letters were found by the Sheriff-substitute when he searched Wilson's repositories, after he was committed for treason, and I believe they can still be seen in the hands of his widow. This to me seems more improper than even corresponding with David, who holds a sort of office in the burgh of Crail, and who seems to be eagerly looking forward to the "seat" of the magistracy; whereas James Wilson never held a higher office than preses, or leader, or agitator, of the merest rabble in a manufacturing town, about the corn laws, the proceedings of Colonel Wardle, or whatever at the time served to inflame the lower orders; and as he lived on the domains of the Hamilton family, and had often invaded their game, the noble Lord must (or might) have known him better than he probably did David of Crail. But his Lordship, and others of his political party, seem willing to open a correspondence with any person who can be prevailed upon to enter into their measures, and to facilitate the views of their party. If David, or Wilson, or any such people, were to presume to write his Lordship on any other subject than politics, they would not be so readily attended to. I have known other instances of that noble Lord corresponding with people of a suspicious cast on political subjects. A few years ago a man of a doubtful character advertised a course of political lectures in Hamilton. The Magistrates called him before them, and prohibited him from lecturing within the burgh. In a few days afterwards, his Lordship wrote from London to the factor at Hamilton Palace to inquire at the Magistrates on what account they had presumed to interrupt this political lecturer. The Magistrates pled, that it was because that itinerant had advertised his lecture

before asking their liberty to do so ; and they were not put to farther trouble on the subject. But when this lecturer, and James Wilson, and their followers, began in 1819 to talk of dividing large estates, and some of their wives, who were far advanced in pregnancy, boasted that they would lie in, in the course of a few weeks, in the palace of Hamilton, the noble family became more alive to their danger, and instructed their factor and the local magistracy to raise and collect a force to protect the palace, and preserve the peace of the county. I am, &c. T. S.—*Clydesdale, May 1. 1821.*" And the following words: " We observe, from the report of the proceedings on Wednesday, that Lord Archibald Hamilton, in the dearth of subjects of political interest, has procured (from a person of the name of Turner) a petition complaining of the arbitrary conduct of the Lord Advocate. It seems that this man was apprehended, and imprisoned for a week, as a suspected person, last year, during the disturbances in the west country, and he now applies for compensation on account of the injury which his character has sustained. The means by which he has been induced to do this are, no doubt, quite worthy of the noble correspondent of the Crail Radicals and Strathaven Traitors." And the following words: " On this occasion Lord Archibald Hamilton has really chosen his ground singularly ill ; and in doing so has shewn either the most lamentable ignorance of the public opinion, or the most extraordinary contempt of it. He ought to know that the conduct of the Lord Advocate, at the time he alludes to, was such as has insured the lasting gratitude of the country, and that it has never been called in question, except by the patrons or associates of crimes which could not have been speedily subdued, except by the most remarkable union of firmness and lenity."

And whether the whole or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up, the character and conduct of the pursuer to discredit and contempt, and were meant and intended to bring, and do bring, his loyalty and attachment to his Majesty and to the constitution into doubt and question ; by falsely and injuriously accusing the pursuer of corresponding, for improper and unconstitutional purposes, with people of low character, on political subjects, or of opposing bills in Parliament, merely in order to acquire popularity, or of being willing to open a correspondence with any person who can be prevailed on to enter into his political measures, or of being regardless of his high birth, or of corresponding with people of a suspicious cast on political subjects, or of having procured from a person of the name of Turner a petition complaining of the arbitrary conduct of the Lord Advocate, or of

having induced the said Turner to apply to Parliament, or of being the noble Correspondent of Crail Radicals and Strathaven Traitors, or of having called in question the conduct of the Lord Advocate, although the conduct of that public officer had never been called in question, except by the patrons and associates of crimes,—to the injury and damage of the pursuer.

It being farther admitted, that the nineteenth Number of the aforesaid Paper was printed and published as aforesaid at Edinburgh, on twelfth day of May, in the year aforesaid, Whether the said paper contains the following words: “The Lord Advocate and Lord Archibald Hamilton.—We have not for a long time observed any thing more malicious and stupid than the petition presented by Lord A. Hamilton to the House of Commons, in name of James Turner, who was confined for a few days during last spring, upon a charge of high treason. Every one knows how these petitions are got up; we shall not therefore insult our readers by an attempt to prove what all of them must know well enough, that this is in truth the complaint of Lord A. Hamilton himself. This noble person is already well known as one of the drudges of the Whig faction,—as the patron of burgh reform, and in that character the honoured correspondent of David Walker of the royal burgh of Crail, of whose power of spelling and composition we lately gave a striking example. But we could not have supposed the noble Lord capable of going this length, or of so far degrading himself as to become the patron also of suspected patriots.”

And whether the whole or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up, the character and conduct of the pursuer to discredit and contempt, and were meant and intended to bring, and do bring his loyalty and attachment to his Majesty and the Constitution into doubt and question, by falsely and injuriously stating and setting forth that the pursuer had presented to the House of Commons a petition in name of James Turner, who was confined for high treason, which petition was malicious, and was not the complaint of Turner, but was in truth the complaint of Lord A. Hamilton, or as having so far degraded himself as to become the patron of suspected patriots, to the injury and damage of the pursuer.

And it being farther admitted, that the Twenty-second Number of the aforesaid paper was printed and published, as aforesaid, at Edinburgh, on the second of June in the year aforesaid, Whether the said paper contains the following words: “Lord A. Hamilton v. The Beacon.—Our readers



must have observed, that we have thought it necessary to comment occasionally on the conduct of Lord Archibald Hamilton, and to examine into the real nature of his political character and pretensions. Every one will allow, that if it is right that public men should be subjected to such an operation at all, this noble Lord is one of the fittest subjects for it. He has been unceasing in his endeavours to bring himself into notice, and certainly not at all scrupulous as to the means of doing so."

And whether the whole or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up the character and conduct of the pursuer to discredit and contempt, and were meant and intended to bring, and do bring his loyalty and attachment to his Majesty and to the Constitution into doubt and question, by falsely and injuriously representing the pursuer as being unceasing in his endeavours to bring himself into notice, and certainly not at all scrupulous as to the means of doing so, to the injury and damage of the pursuer.

Damages laid at L.5000.

WILLIAM ADAM,  
Lord Chief Commissioner.

*Jury-Court, June 5. 1822.*

The following list of witnesses, cited for the parties respectively, were put into process.

*LIST of WITNESSES to be adduced by the Pursuer, in  
causa Lord ARCHIBALD HAMILTON, M. P. against  
DUNCAN STEVENSON, printer in Edinburgh.*

- 1 David Walker, now or formerly convener of the trades at Crail.
- 2 Mrs Helen Marshall, or Wilson, relict of the late James Wilson, hosier in Strathaven.
- 3 Thomas Somerville, weaver in Strathaven.
- 4 Matthew Steele, weaver in Strathaven.
- 5 Mr William Dykes, writer in Strathaven.
- 6 William Currie, residing in Strathaven.
- 7 Gavin Burns, wright in Hamilton.
- 8 James Turner, tobacconist, Glasgow.
- 9 William Lang, printer in Glasgow.
- 10 Sir William Rae, of St Catherines, Bart.
- 11 Robert Brown, Esq. residing in Hamilton.

- 12 William Hamilton, Esq. writer in, and chief magistrate of Hamilton.
- 13 Duncan Stevenson, the defender, as a haver, to produce David Walker's letter, given as a *fac simile* in the Beacon Newspaper.
- 14 Sir Henry Stewart, of Allanton, Bart.
- 15 General William Maxwell, of Thornton.
- 16 General John Hamilton, of Dalziel.
- 17 Sir George Warrender, of Lochend.
- 18 Admiral Charles Fleming, of Cumbernauld.

*LIST of WITNESSES to be adduced by the Defender, in causa The Right Honourable Lord ARCHIBALD HAMILTON against DUNCAN STEVENSON, printer in Edinburgh.*

- 1 William Aiton, sheriff-substitute of Lanarkshire, at Hamilton.
- 2 George Douglas Aiton, writer in Hamilton.
- 3 David Bain, compositor in the defender's printing-office.
- 4 Robert Brown, Esq., residing in Hamilton.
- 5 Andrew Reynolds, compositor in the defender's printing-office.
- 6 Alexander Alexander, compositor in the defender's printing-office.
- 7 George Salmon, procurator-fiscal of Lanarkshire, at Glasgow.
- 8 David Walker, now or formerly convener of the trades at Crail, as a haver, to produce Lord Archibald Hamilton's letters to him.
- 9 Robert Downie, Esq. of Appin, M. P.
- 10 David Robertson, newspaper agent, Edinburgh.
- 11 Charles Cunningham, writer to the Signet.
- 12 John Clerk, now or lately clerk to the defender.
- 13 All the witnesses for the pursuer.

## IN THE JURY COURT.

*Edinburgh, 19th June 1822.*

*In the ACTION of DAMAGES in which Lord ARCHIBALD HAMILTON is Pursuer, and DUNCAN STEVENSON, Printer, Edinburgh, Defender.*

The Cause being called,

PRESENT,

Right Hon. WILLIAM ADAM, Lord Chief Commissioner.  
 Lord GILLIES.  
 Lord PITMILLY.

The following gentlemen were sworn as a jury to try the issues :

Alexander Wardrope, Esq. of Bridgehouse.  
 Robert Scott Moncrieff, wine-merchant, Edinburgh.  
 Josiah Maxton, saddler there.  
 Christopher Veitch, Esq. of Tartraven.  
 Robert Smith, merchant, Edinburgh.  
 Græme Mercer, Esq. of Mavisbank.  
 John Buckle, Esq. of Newhall.  
 Andrew Bonar, banker, Edinburgh.  
 James Dickson, nurseryman there.  
 Alexander Henderson, Esq. of Warriston.  
 David Kinnear, banker, Edinburgh.  
 Sir Robert Keith Dick, Bart. of Prestonfield.

The issues were then read over to the jury by the clerk, after which Mr Cockburn addressed the Court as follows :—

MR COCKBURN.—My Lords, and gentlemen of the jury, —This is an action for damages, in which Lord Archibald Hamilton is the pursuer, and a person of the name of Duncan Stevenson is the defender. The action has been brought for reparation of injury done to his character and feelings, by certain publications, which the pursuer thinks are of a very scandalous and atrocious



nature. Those publications were made in a newspaper called the *Beacon*, which was some time ago published in this city.

And now, gentlemen, it is impossible for me, or, I presume, for any party or counsel on any occasion, to mention that word "*Beacon*," without giving a very serious admonition to any jury to whom it is addressed. Very unfortunately, that (with the general character of which we have nothing whatever to do at present) possessed a degree of reputation,—I am not saying whether good or bad,—but it possessed a sort of reputation, of which the *effect* unquestionably has been, that the very name of it cannot be alluded to, without splitting the audience to which it is addressed into two distinct parties; one of which has a desire to show that they praise every thing it contained, and the other is equally ready to abuse it for every thing in its columns. I mention those facts to you, gentlemen, just for the sake of impressing this conviction on your minds—a conviction with which I myself am most sincerely impressed—that you ought to try this case on its own merits, and not to allow your minds to be biassed either one way or another, or your opinion of this case to be led away by your previous sentiments with regard to that publication.

Our courts of justice are come to a miserable plight indeed, if a fair discussion of a case, and a just verdict according to evidence, cannot be obtained, merely because the injury for which reparation is asked has been contained in a particular newspaper. It is the most sacred duty of a Jury, and of a Court, to keep its mind steady amidst the prejudices or irritations suggested or excited by that subject; and, whatever opinion you may have as to the merits of the *Beacon*, (of which I am entirely ignorant), by the great oath you have now sworn, you are bound to decide this case as a fair question on its own merits. Upon these merits I think it is utterly and perfectly impossible that you can entertain a doubt. With respect to the amount of damages, you may all differ; and on that subject I shall not say a word. But that damages in this case are due, for a most scandalous, most unprovoked, and persevering series of defamatory libels, I say no fair man can doubt; and I shall state to you very shortly the grounds on which that opinion rests.

You all know the situation which the noble pursuer of this action holds. He is connected with a very great family;—he is a member of Parliament;—and he takes an active share in all parliamentary matters. Whatever line of politics he may adopt, it is his right,—I say it is his duty,—to take a share in the deliberations of that assembly of which he is a member. And accordingly he expects, as every person in that situation undoubtedly does, that his public conduct is to be exposed to fair censure or animadversion. And if he had been attacked in this newspaper by nothing but that sort of free criticism to which every public man must in this country lay his account with being subjected, he never would have complained. He was not at all discomposed by the bad jokes of the *Beacon*: Its vulgarity, its bad writing, or its impertinence, did not distress him in the least. But the editor of that paper (for we have the responsible editor alone here) has chosen to attack his character on the grounds of certain specific *facts*, as they are called, every one of which is of pure malice, and most injurious invention. And if that shall be proved to you, of course this is a case taken altogether out of the ordinary range within which editors of newspapers defend themselves under the liberty of the press. I know no right such editors or writers in newspapers have to charge any public individual with certain specific facts or crimes, if there be no foundation for the charge. So the question just is, What is it that those libellers assert as facts? and how far are these assertions unfounded, and defamatory of the pursuer?

We object to *three* statements, and I shall take the liberty of stating them to you one by one: but I must take this opportunity of premising, that the object of the defender will be to hide the enormity of those libels from your eyes, by connecting them with a great deal of other matter, with which they have no concern, and thus to prevent your seeing their injurious tendency.

In order therefore to bring you at once to the justice of this cause, let me explain to you the nature of the three charges that are made here against Lord Archibald Hamilton. And, before reading the passages, I shall always tell you what are the real facts.

The first case relates to Lord Archibald Hamilton's concern with a person of the name of *Walker*. Last year, or the year before, Lord Archibald Hamilton was the chairman of a committee of the House of Commons on the reformation of the Scots burghs. That was a public committee, you will observe, which was appointed to sit by the House of Commons, no doubt on a motion made by Lord Archibald Hamilton himself in that House. In this situation he had—as every person in that situation must have—a great deal of communication with persons he never before saw or knew any thing about. He was liable to be assailed by communications from all parts of the country, and to these it was his official duty to attend.

It seems there is or was a person at Crail, on the other side of the water,\* of the name of David Walker. This person held the situation of *convener of the trades* of the burgh of Crail; and, of course, he had a material interest in every thing connected with his own burgh. Lord Archibald Hamilton never knew, and does not at this moment know, any thing of that man. He never saw him.

One of the first things done by the committee was, to order all the burghs to send up to the chairman a copy of their sets, stating the difference between the practice of the burgh and its written constitution. The set of the burgh of Crail was sent up to Lord Archibald Hamilton, in obedience to that order.

David Walker, for some purpose or other, wanted to see the set of his own burgh; and, on application to the local authorities at Crail, they did not give it to him. I believe the apology was, that it had been sent to London. He therefore wrote a letter to Lord Archibald Hamilton, as chairman of the burgh committee, in which he asked his Lordship, in that official character, to send him a copy of the set of the burgh of Crail. A copy of that letter will be read to you to-day. At present, all I state to you is this, that, whenever it is produced, it will appear that it was nothing at all but a simple application for the set of the Crail burgh.

\* The Frith of Forth.



The defender in this action has pretended to print a fac-simile of it, and said it was ill written and ill spelt. I have no doubt it was. I do not expect a person in the situation of life in which David Walker happens to be, to be eminently distinguished for talents in literature. And if he was as ignorant as many of the writers of the Beacon appear to have been, Lord Archibald Hamilton was not responsible for that sin. All he had to do with the matter was this:—He received a letter from David Walker, asking a copy of the set of the burgh. Lord Archibald Hamilton sent a letter, which is, I believe, in the pocket of David Walker at this moment. It is a cold, distant, proper, *official* answer to his letter. It is a letter saying nothing whatever, except this: I am surprised you should apply to me for a set of your own burgh. I presume you do so because the set was sent here. I have therefore ordered the clerk of the committee to send you a copy of that set, and, agreeable to the previous order, you will let me know how far the set is different from the practice of the burgh.

This letter did not contain one word of politics, either general or particular. I have not read the letter to you, but I have given it, nearly in its very terms. There was nothing about *indefeasible privileges*, or *imprescriptible rights*, or the *revolution 1688*. It was just the proper answer from the chairman of such a committee to such an application.

Upon getting this letter, David Walker writes again, acknowledging the receipt of Lord Archibald's letter, and of the set of the burgh. And that was all the connection the pursuer ever had, in the course of his existence, directly or indirectly, with David Walker.

Was there any thing wrong in this? The pursuer was the chairman of a burgh committee, and the convener of the trades of a burgh writing to him asking the set of the burgh, gets the set, acknowledges receipt of it, and there the matter ends. I confess I do not see much *treason* in that—I cannot even smell out *sedition*. I see nothing but what, if Lord Archibald Hamilton had not done, he would have been unworthy of his situation as a member of parliament, and chairman of that committee. Our representatives are not sent to Parlia-

ment to do nothing,—they have great public duties to discharge, and we have important privileges to be maintained. And if the chairman of that committee had refused to attend to an application, such as that made by David Walker, merely because his correspondent was a poor man, or did not write a good letter, he would have been utterly insensible, or regardless of, his duty.

These were the facts,—that was the truth. And now you will be so good as see, out of those very harmless elements, what the defender has made. I beg you again to turn to the libel, and, as I know the sting of it will be attempted to be concealed, by burying it under a mass of other matter with which it has no concern, I will thank you to take a pen and mark the passages which I shall point out to your particular attention. Look at the second page of that libel, and you will see the statements I refer to.

It is not immaterial to observe the passage beginning on the third line of the second page of the issues in your hand, which I mention, as shewing the authors of it were particularly aware they were writing about Lord Archibald Hamilton *as the chairman of that committee*.\* And this is made more plain, from a passage at the top of page eighth. There they speak of this noble person as “well known,—as one of the drudges of the Whig faction,—as the patron of burgh reform, and in that character the honoured correspondent of David Walker of the royal burgh of Crail.” So that they were aware they were criticising that noble person in his *official* character.

They go on, in the second page,† abusing all Whigs and reformers in general; to which I have no objection. But then they go on, “I verily believe, however, that we should have much less of this nonsense, and most people would be easily laughed out of it, if it were not for the countenance which *it receives from above stairs*.” That is partly applied to the pursuer of this action, and partly to *Parliament*. “Not to go farther, only look to the conduct of Lord Archibald Hamilton, who has been *working for years past at this kind of mischief*.”

\* *Vide* p. 70. 74.

† *Vide* p. 69, 70.

He is here plainly called a worker of mischief, and the mischief is described in a passage before, which I need not read to you.—“ I don't know what has been his success elsewhere, but I am sure that in Crail he and his understrappers have caused more harm than ten bad fishing seasons could have done. This noble Lord calls himself a friend to the happiness of the lower orders. And how does he promote their happiness? Why, by *trying to place them at variance with their rulers*, and leading them to think of his absurd plans, and of their own imaginary grievances, instead of their useful and honest occupations.” Observe here, that the editor of that paper is speaking of Lord Archibald Hamilton as a man discharging certain public duties in an official capacity; and there is a direct charge of his *intentionally wishing* to excite public discontent; for that is the fair construction of the words, “ *trying to place the lower orders at variance with their rulers.*”

Then they go on: “ The reformers here have even been encouraged to adventure on the dangerous use of pen and ink in his service, and to correspond with him with regard to the affairs of the burgh. The person who generally communicates with Lord Archibald is one David Walker, the convener of the trades; though it may be supposed that he sometimes avails himself of the epistolary talents of his friends.” And then they say: “ This David is a person of great authority among our reformers; indeed, he may fairly be said to be the ‘ James Gibson ’ of the place. He has long been an object of great alarm to his opponents in the burgh; and I believe few even of his friends approach him without a certain degree of awe. This has been particularly the case since his correspondence with Lord Archibald; for he now thinks himself entitled to maintain as stately an air, and to look as sour and sulky as the best Whig among them. Of course Lord Archibald *answers to the letters.*”—Observe the *plurality* of that expression, ‘ answers to the letters.’—“ Of course, Lord Archibald’s *answers to the letters* which *are* sent him from this respectable quarter, are generally quite in the common cant which is used on such occasions. *They contain* a great deal about “indefeasible privileges,” and “imprescriptible



rights;" and "the revolution of 1688;" and "the enlightened burgesses of Crail." All those words, observe, are given *as quotations* from the letters of Lord Archibald Hamilton; "*indefeasible privileges*;" "*imprescriptible rights*;" "*the revolution of 1688*;" "the enlightened burgesses of Crail." Observe, the imputation here is, that Lord Archibald Hamilton has been in the *general habit* of corresponding with this person: whereas I have stated, he never did any thing but write *one* letter, sending him a copy of the set of the burgh of Crail. Yet this editor says, that Lord Archibald Hamilton wrote to this poor man about "indefeasible privileges," "imprescriptible rights," "the revolution of 1688," "the enlightened burgesses of Crail."

In the course of this day it is *our* business only to read those libels. David Walker has the letter in his pocket which he received from Lord Archibald Hamilton; and he will tell you he received no other, at any time, from his Lordship. We shall place him in that box; and if the defender's counsel choose to venture on the experiment, they will have an opportunity of calling upon him to produce it. You will then find, that Lord Archibald's letter does not contain any one of the expressions which have been imputed to him.

I should like to know, if any of you, gentlemen, placed in an official situation, and writing to a person in an official capacity, and in no other, would like to have *false quotations* picked out of your letters, and then yourselves to be held up to public notice as the correspondent of such a person as they describe this person at Crail to be, and to be twitted about imprescriptible rights, and the revolution of 1688? Gentlemen,—It is a downright falsehood, that any such expressions were ever made use of in the letter of Lord Archibald Hamilton. It is false, Lord Archibald ever wrote a single letter to this person, but one.

They go on to say,—“ But such letters have their effect; for the people are delighted with being noticed in these fine words, and the cause of reform has certainly derived a considerable increase, both of numbers and importance, from this circumstance. To give you some idea of Lord Archibald's correspondents, I enclose a

*fac-simile* of one of David's letters, which I got hold of before it left this, and copied by the new lithographic method." And then they give the letter itself, as they say, copied from the original by the new lithographic process. It is a letter in which David, with eminent departure from the rules of good writing and spelling, requests to have a copy of the set of the burgh of Crail, for the convener and deacon, and trades of the burgh. Now observe this,—“ I enclose a *fac-simile* of one of David's letters, *which I got hold of before it left this.*” That is a falsehood; invented for the sake of insulting the pursuer. David Walker is here, and he will tell you, that before he sent off this letter, (whether it was from Edinburgh or Crail, I do not know), he showed it to nobody; and the date of its publication will show you it was impossible the editor of this paper could have seen this letter before it was sent from Scotland. The conviction of the pursuer is, (for he himself showed it to nobody), and the hypothesis which he firmly believes is, that he dropped that letter by accident from his pocket, in the committee room of the House of Commons, and some person, (*gentleman I cannot call him*, for he must have been regardless of every principle of honour), picked that letter up, and sent it down to the editor of this newspaper. It was picked up and sent down here by stealth, if it be not proved by the other party that it was shown here before it was sent off.

They go on and say, near the bottom of the third page,\*—“ But it surely ought to be a matter of the *deepest self-reproach* to Lord Archibald Hamilton, that he has led such persons into this *mischievous and extravagant folly.*” Here is a statement, that a person acting publicly as a member of Parliament, and the chairman of a committee of the House of Commons, had done that for which he was liable not only to animadversion, but for which he ought to reproach himself; and the ground of the reproach is, that he had purposely led certain persons into mischievous and extravagant folly. Then they say,—“ If his Lordship likes to waste his own time on burgh reform, let him do so, and he will only be laughed at for his pains; but when he leads men like David Walker

\* *Vide* p. 71.

to fool away their time in such nonsense, he deserves much *severer* treatment." And accordingly you will see what the nature of this *severer* treatment was.

That is the story as to David Walker, and the question I have to ask you, is this very plain one, Is it to be impossible for any gentleman to act as a chairman of a parliamentary committee, and to send a paper asked for, without having it written and published of him, that he has been leading the people into mischievous and extravagant folly, *trying* to set the lower orders at variance with their rulers;—and then, to make that charge more probable, is that person, so acting, to have it falsely said, he has been in the *general habit* of corresponding with persons in a low rank of life, and then have words put into his mouth which he never used?—If you do not give damages for this, this day, no conclusion can be drawn from your verdict, but that, in your opinion, every member of Parliament, (no matter of what party in politics he may be), is exposed, without relief or reparation, to the grossest calumnies.

The next story which you have to consider is that of *James Wilson*. (You need not look at the issues yet.) The pursuer, Lord Archibald Hamilton, has been member of Parliament for the county of Lanark since the year 1804, and in that capacity he holds it to be a part of his duty, (and a very valuable doctrine it is for us to maintain), to present every petition to Parliament that complains of a grievance,—which he thinks a real grievance,—which is couched in language that is temperate to that honourable house,—and respectful to the laws of the land; and he also reckons it a part of his duty, if there should be any correspondence at all held on that subject, that he should not turn himself away from those who apply to him, but that he is bound, to a certain extent, to listen to the statements of the people, especially of those who are his constituents, and who think proper to address him as their representative in Parliament.

Lord Archibald Hamilton, then, being member of Parliament for the county of Lanark in 1805, received a letter from a person of the name of James Wilson about the corn laws;—a subject about which there has been a number of applications to Parliament lately;—and I



do not think Lord Archibald Hamilton was very wrong in receiving a letter from his own county on that subject: and this was done by almost every other member of Parliament.

This application was made by James Wilson, weaver in Strathaven, a person never seen before by Lord A. Hamilton. *He never saw him at all*;—he had no previous acquaintance with him. But it seems he was preses of a committee of persons who had held a public meeting to petition Parliament about the corn laws,—whether for or against them I do not know, and do not care.—All that I have to say is, a part of the subjects of this country met, and petitioned about the corn laws; and they asked his Lordship to present their petition to Parliament.—His Lordship wrote to them from London; and his letter, in answer to the application, is in these terms:—

*London, February 12. 1805.*

SIR,—I have only time at present to acknowledge the receipt of your letter, and to acquaint you, in answer to it, that I shall be happy to present the petition of the town of Strathaven to the House of Commons whenever it is transmitted to me. *I rely, in confidence, upon your assurances, that the language of the petition is respectful to the House, and the character of the petitioners both loyal and peaceable.* I am, &c.

A. HAMILTON.

Mr James Wilson, Strathaven.

Whether he presented that petition or not, I am sure I cannot tell you. It is of no consequence. But that was the *first* letter he ever wrote to James Wilson: “I shall present your petition to Parliament if its language is respectful to the House, and the character of the petitioners be loyal and peaceable.”

He heard no more of Wilson or his petition for a period of ten years. The first application to him was made in 1805, the next in 1815, when another letter came to him from the same quarter, asking the same thing of him, to present a petition to Parliament; and he answered it thus:—

Chapel Street, 5th May 1816.

SIR,—I have only time to say I shall most willingly present your petition for the repeal of the corn bill; but I have no hope that the House will pay any attention to it this Session, and should recommend your delaying your proceedings till next year. I am, &c.

A. HAMILTON.

Mr James Wilson, Strathaven.

These two very innocent documents *form the whole correspondence of Lord Archibald Hamilton with James Wilson*. He never saw that man, and never wrote him, except these two letters.

However, an event happened in 1821, which gave the editor of this paper an opportunity to convert these simple facts into a false and intolerable calumny against the pursuer. The circumstance to which I allude is, that in that year a person of the name of James Wilson was executed at Glasgow for high treason. Whether that was the person who had written to Lord Archibald Hamilton, we do not know; but I have no doubt of the identity of the man, although I have no proof on the subject. A James Wilson had the misfortune to be executed for high treason in 1821; and it may be taken for granted he was that James Wilson who wrote to Lord Archibald Hamilton in 1815. Observe, now, the spirit in which the commentary on that event, in this newspaper, is dictated. Instantly this event was laid hold of:—the event itself was of no importance whatever to Lord Archibald Hamilton personally; but observe the commentary made upon it.—I have first to direct your attention to the *fourth* page of the libel in these issues.\* The title is, “Lord Archibald Hamilton’s correspondents;” and the article itself is in these terms:—“The following letter on this subject is from a most respectable quarter; and we can pledge ourselves for the perfect accuracy of its contents.” Then it goes on with a long tirade about Lord Archibald Hamilton, which I need not read to you. Towards the end of page fourth,

\* Vide p. 71.

alluding to Lord Archibald Hamilton having written to David Walker, they say,\* “ It might be expected that the son of the first peer of Scotland, whose family, only a few generations past, had but one feeble life between them and the Crown, and who represents the most populous county in Scotland, *would not so far forget his high birth, and lay aside his family pride,* as to correspond with a prattling presumptuous tradesman, so ignorant and illiterate as this convener of Crail evidently appears. *But this is not the only instance in which this noble Lord has corresponded with people of low character on political subjects.*” I know very well the obvious commentary which will be made upon this. It will be said by the defender’s counsel, that every member of Parliament may correspond with low persons on such subjects. But the question for you to determine is, Whether this was or was not said *in an insulting sense* of Lord Archibald Hamilton? There can be no doubt that it was, when you see it said of the pursuer, that he had forgotten his high birth, and what was due to his family, for the sake of corresponding with low persons on political subjects,—and that for the attainment of a certain end ;—for they go on to say,† “ When his Lordship, and other of the opposition members, *were endeavouring to acquire popularity by opposing the corn laws ; and when James Wilson, then hosier in Strathaven, who was lately executed at Glasgow for treason, was at the head of a mob of the lowest people in that town, burning the effigies of Lord Castlereagh, and others who differed in opinion from the opposers of those laws, Lord Archibald Hamilton corresponded with Wilson on that subject, though he was then under prosecution at the instance of the Hamilton family for poaching their game.* Wilson showed his Lordship’s letters, and read them to crowds on the street ; and some of these letters were found by the Sheriff-substitute when he searched Wilson’s repositories after he was committed for treason ; and I believe they can still be seen in the hands of his widow.”

The statement here is, that, purely for the sake of acquiring popularity, Lord Archibald Hamilton, a member of Parliament, and of a great family, so far purpose-

\* Vide p. 71.

† Vide p. 72.



ly forgot his station and his family, as to correspond with a man at the head of a mob, and although, at the moment, he was prosecuting that individual for poaching. That Wilson was so prosecuted as a poacher or not, we deny. The defender may prove that fact: we pointedly deny it. If such prosecution ever took place, Lord Archibald Hamilton and his legal agents never heard of it, and they deny it to be true. You will judge why it was put in there. If he had corresponded with a person at the head of a mob, he might not have known it;—that was nothing to Lord Archibald Hamilton. But it was considered necessary to show that this person had incurred the displeasure of the Hamilton family, by illegal practices. It was a gratuitous and malicious invention, for the sake of giving a greater sting to what they said.

Then they go on to say,\* “ This to me seems more improper than even corresponding with David, who holds a sort of office in the burgh of Crail, and who seems to be eagerly looking forward to the ‘ seat’ of the magistracy; whereas James Wilson never held a higher office than preses, or leader, or agitator of the merest rabble in a manufacturing town, about the corn laws, the proceedings of Colonel Wardle, or whatever at the time served to inflame the lower orders; and *as he lived on the domains of the Hamilton family*, and had often invaded their game, *the noble Lord must (or might) have known him better than he probably did David of Crail.*”

Now the fact is, that Wilson, so far as we know, never lived on any part of the Hamilton estate, and he never invaded their game. So that you have here a statement, that the pursuer *had gone out of his way* to correspond with an individual who had poached and committed trespasses on the Hamilton estate, on which that individual lived, and on which, I say, he did not live,—and that the pursuer so acted, *for the sake of acquiring popularity*. Is this statement of the defenders actionable or not? By actionable, I mean, is it offensive and insulting to the pursuer, Lord Archibald Hamilton? Does it impair the usefulness of a member of Parliament to say of him, Here is a person whom you have been prosecuting for

\* Vide p. 72.

poaching, and yet you so far forget your noble birth, and the dignity of your family, as to correspond with him, *when he is at the head of a mob*, upon the subject of the corn laws, Colonel Wardle, or whatever else tends to inflame the lower orders?

If this story were true, if those statements were believed of any member of Parliament, that member should instantly *leave* the House; and if he did not do so, of his own accord, he ought to be *expelled* from Parliament, where he could no longer be useful. I know nothing more atrocious that could be said of any public man than this, that, when a poacher is under prosecution at his own instance, he will condescend to correspond with him, while at the head of a mob, on political subjects, merely to inflame the lower orders, for the purpose of acquiring popularity.

Then they go on to say,\* “ But his Lordship, and others of his political party, seem willing to open a correspondence with any person who can be *prevailed* upon to enter into their measures, and to facilitate the views of their party. If David, or Wilson, or any such people, were to presume to write his Lordship on any other subject than politics, they would not be so readily attended to. I have known *other* instances of that noble Lord corresponding *with people of a suspicious cast on political subjects*. A few years ago, a man of a doubtful character advertised a course of political lectures in Hamilton. The magistrates called him before them, and prohibited him from lecturing within the burgh. In a few days afterwards, *his Lordship* wrote from London to the factor at Hamilton palace, to inquire at the magistrates on what account they had presumed to interrupt this political lecturer. The magistrates pled, that it was because that itinerant had advertised his lectures before asking their liberty to do so; and they were not put to farther trouble on the subject.”

The fact here is, that Lord Archibald Hamilton never knew any thing of this circumstance, or heard of this lecturer in his life, till he saw it published in the Beacon; and he authorizes me to deny that he ever interfered in

\* *Vide* p. 72.

the matter. Whether the Duke of Hamilton ever did, or his advisers, I do not know. With that the pursuer has nothing to do. The fact is, Lord Archibald Hamilton never interfered in this matter.

So far with respect to this story of James Wilson. Now as to that of *Turner*.

And here, gentlemen, I shall first state to you, in conformity to my original plan, the facts out of which the paragraph relating to this person has been made.

Turner, who is still alive, and will be examined here to-day, like many others, was apprehended on suspicion of being connected with the disturbances which took place some years ago at Glasgow, and put in jail. There he lay for some time, and never was brought to trial. He was in a respectable rank of life, and, never having been brought to trial, we are bound to believe he was innocent. This person thought himself ill used—ill used in having been thrown into prison, and in having been kept too long there. He thought it was hard to keep him so long there, and then send him away unquestioned. Whether this was ill usage or not, I do not know. He was certainly entitled to form an opinion on the subject. He thought so. If I had been so used, I would, in my own case, have thought it no great violation of law to have formed an opinion on the matter. Having formed an opinion that he had been ill used, he thought of applying to Parliament for redress. Whether that was a prudent measure or not, I do not pretend to say; but certainly he was entitled to do this. It was perfectly legal, whether it might be available to him or not. Lord Archibald Hamilton was at this time living at Hamilton palace. He never saw Turner before. But Turner wrote to his Lordship, requesting him to present his petition. Lord Archibald Hamilton sent a verbal message, that he wished to see him on the subject. While Lord Archibald Hamilton was in Glasgow, and about to go to London, Turner called and saw him. Lord Archibald heard his story, and said if it was a petition couched in language respectful to the House, it was his duty, as a member of Parliament, to present it to the House of Commons, and he accordingly agreed to present his petition. Now, you will observe, he had pre-



viously received only one letter from Turner, simply asking him to present that petition. When Lord Archibald saw Turner, he found his story deserved attention. I believe another member of Parliament had been previously spoken to (Mr Maxwell), and that honourable member did not see any thing improper in the petition, or any thing improbable in the story; and he had also agreed to present the petition. But the fact to which I beg you will particularly attend, is, that Lord Archibald Hamilton had, at this time, received no letter from Turner, excepting the one asking him to present the petition; and this he agreed to do, only after he saw him in Glasgow.

Some time after this, when the pursuer was in London, he received a letter from Turner, enclosing his petition, with a request that he would present it; and he received one other letter from Turner, asking him to delay presenting the petition; and the reason assigned for the delay was, that Mr Maxwell and some other members, to whom Turner had written, were not in town, but were to be there soon, when they would have an opportunity of supporting the petition. Lord Archibald thereupon saw Mr Maxwell, and agreed to the delay. The only letter Lord Archibald Hamilton ever wrote to Turner, was the following:—

*“ Chapel Street, March 17. 1821.*

SIR,—In consequence of your letter of the 9th, I shall postpone presenting your petition till Mr Maxwell returns to London. You will therefore take care to see him, and give him all the information requisite upon your case.

Your most obedient, &c.

A. HAMILTON.

That is all the correspondence the pursuer ever had with Turner. He wrote him *one* letter, agreeing to delay presenting his petition for a fortnight, and he received two letters from him.

A delay of a fortnight accordingly took place; and it is material to observe what the pursuer did during

this time. He held a petition, complaining of certain proceedings of the Magistrates of Glasgow,—perhaps of the Lord Advocate. *The pursuer waited on the Lord Advocate, who was then in London.* He said, Here is a petition which I think you ought to see before I present it. What time will you take for inquiring into the circumstances? His Lordship asked a fortnight. Lord Archibald then left the petition with the Lord Advocate. *His Lordship himself gave it back to the pursuer at the end of a fortnight.* The petition was presented to the House, when the Lord Advocate was in his place, and he heard all that was said upon it. These are the facts of the case.

I do not think there was any thing wrong here, on the part of Lord Archibald Hamilton. On the contrary, I confess, that in this, as in all the other instances I have detailed to you, I think there was a tone of excessive prudence and moderation observed by the pursuer, as a Member of Parliament, on those several occasions. I confess I had an idea, that, when the correspondence of such a Member of Parliament was ransacked, a much more intimate and extensive correspondence would have been disclosed with such persons. Yet, with the exception of the letter to Walker, the two to Wilson, and this one to Turner, none ever existed. I do not say none were *discovered*, but I say none *existed*, except those which I have mentioned.

Now, keeping these facts in view, I pray you to observe, what the commentary made in this newspaper is: I read from the middle of the sixth page of the printed issues before you:—“We observe from the report of the proceedings on Wednesday, (that is the Parliamentary proceedings), that Lord Archibald Hamilton, in the dearth of subjects of political interest, *has procured* (from a person of the name of Turner) a petition, complaining of the arbitrary conduct of the Lord Advocate.”

He did not *procure* that petition. He got it in the way I have described.

“It seems that this man was apprehended and imprisoned for a week, as a suspected person, last year, dur-

\* *Vide* p. 73.

ing the disturbances in the west country ; and he now applies for compensation on account of the injury which his character has sustained. *The means by which he has been induced to do this,*” (that is to say, to petition), “*are no doubt quite worthy of the noble correspondent of the Crail radicals and Strathaven traitors.*”

I shall offer no commentary upon words which it is quite impossible for any commentary to aggravate. For writing one letter to Walker, and two to Wilson, and one to Turner, of the nature that will be proved to you, Lord Archibald Hamilton is here called, “*the correspondent of the Crail radicals and Strathaven traitors ;*” and then he is accused of *procuring* a petition complaining of the arbitrary conduct of the Lord Advocate, by improper means.

As to Lord Archibald Hamilton becoming the correspondent of those poor persons, and, in his letters, talking, as is falsely said, of “the revolution of 1688,” and imprescriptible rights,” and indefeasible privileges,” I have already spoken. They go on thus : “And here (it is said) “Lord Archibald Hamilton has chosen his ground singularly ill ; and, in doing so, has shewn, either the most lamentable ignorance of the public opinion, or the most extraordinary contempt of it. He ought to know that the conduct of the Lord Advocate at the time he alludes to, was such as has insured him the lasting gratitude of the country, and that it has never been called in question, except by the patrons or associates of crimes, which could not have been speedily subdued, except by the most remarkable union of firmness and lenity.”

Now, observe, gentlemen, he is accused of *procuring* the petition, complaining of the arbitrary conduct of the Lord Advocate ; and then it is said, “He ought to know, that the conduct of the Lord Advocate at the time he alludes to, was such as has insured the lasting gratitude of the country ; and that it has never been called in question, except by the patrons or associates of crimes, which could not have been speedily subdued, except by the most remarkable union of firmness and lenity.”

I have no objection to your exercising your ingenuity, and stretching your charity, if that could possibly be ap-



plied here, to the defender; but what interpretation you can put upon these words, but that Lord Archibald Hamilton is here held forth as the *patron and associate of crimes*, which the Lord Advocate had put down, I cannot conceive.

Then they go on at the bottom of the 7th page to use words which makes this passage less equivocal. The article sets out thus: \* “The Lord Advocate and Lord Archibald Hamilton.—We have not, for a long time, observed any thing more *malicious* and stupid than the petition presented by Lord A. Hamilton to the House of Commons in the name of James Turner, who was confined for a few days during last spring upon a charge of high treason. Every one knows how those petitions are got up. We shall not, therefore, insult our readers, by an attempt to prove, what all of them must know well enough, *that this is in truth the complaint of Lord A. Hamilton himself*. This noble person is already well known as one of the drudges of the Whig faction,—as the patron of burgh reform, and, in that character, the honoured correspondent of David Walker of the royal burgh of Crail, of whose powers of spelling and composition we lately gave a striking example. But we could not have supposed the noble Lord capable of going this length, *or of so far degrading himself as to become the patron also of suspected patriots*.”

I presume I need not make any commentary upon those words. The first passage gives it to be understood, that although the petition was in the name of Turner, it was *procured* by Lord Archibald Hamilton. But this one takes this slight veil off, and says it was not the petition of Turner at all; but *the petition of Lord Archibald Hamilton himself*. Well, holding it thus, what then are the words? They are these. That you, Lord Archibald Hamilton, in this petition, are calling in question the conduct of the Lord Advocate, in consequence of proceedings, for which it is almost universally admitted the Lord Advocate merits the lasting gratitude of his country, and which were never called in question, but by the patrons and associates of crimes. And then the pursuer is called

\* *Vide* p. 74.

in direct terms, the “patron of suspected patriots;” that is, *the patron of suspected traitors*, (alluding to the case of Turner).

Then they sum up the whole at the bottom of the 8th page, in these terms :\* “ He has been unceasing in his endeavours to bring himself into notice, *and certainly not at all scrupulous as to the means of doing so.*”

Those are the words upon which this action has been brought; and I have only to observe to you, that the defender has aggravated the guilt of publishing those words by every aggravation the case admits of. In the first place, he was challenged in due time for the using of that language; and, if he had then come forward with any apology or explanation, this action would, in all probability, never have been brought. But he refused an apology; and, on the contrary, did every thing in his power to aggravate the injury. If he ever tendered any apology, let him prove it.—We cannot prove a negative;—we state that he offered none.

In the next place, when the action came into Court, his defence, as we shall show you, consists in broadly stating, that *the whole of those assertions are true*. He says, in direct terms, “ he reserves his right to prove the truth of one and all of those statements, should that be necessary;” and he affects to be burning with a desire of having an opportunity of proving them.

And, lastly, when he was asked,—in the belief that he was the mere editor and publisher of the newspaper,—who was the author of these libels, he has uniformly refused to tell. We do not know the author at this moment,—and that, I state, is the *last* aggravation of which a printer, in any case, can be guilty.

I am aware, or rather, I should say, I am *not* aware, what he has to say for himself;—but I believe I have a sort of guess. His defence will just consist of this: I have no idea he will trouble you with any evidence; but he will draw largely on your credit.

He will say, in the first place, that the sting of the words he has made use of is entirely taken out, by only reading the context of the papers.—He will say, read

\* Vide p. 75.

the whole passages, and the words will have quite a different meaning.

No defence can be more relevant. I have no objection to his reading all the Beacon from beginning to end; and, if you can affix any other meaning to these words than what I have put on them, I can have no objection to your doing so. But my impression is, that, the more the context is read, the more disgraceful and abominable that calumny will appear. If you comply with his request, I hope you will not fall into the trap which I know is laid for you, of having your eyes withdrawn from the words I have read, by overwhelming you with a mass of other matter totally unconnected with them. Look at the issues, and keep in view the expressions which I have pointed out to your notice, and then you cannot go far wrong.

He will then say, having thus given the words their fair meaning, and the interpretation which is rightly due to them, they are all true; and then he will perform the easy and happy operation of attempting to get quit of the whole by a gloss. He will tell you, that Lord Archibald Hamilton, being a public man, is liable to censure and animadversion;—and then he will take each sentence singly, and he will ask, Is it not true that he corresponded with a suspected character of the name of Turner?—with a low man on political subjects, as James Wilson?—You will have your understandings insulted by such a paltry device. But it will not shut either your eyes or *hearts*; and I shall leave the defender to revel in those defences as much as he pleases.

Gentlemen, Lord Archibald Hamilton is a nobleman, a member of Parliament, a chairman of a committee appointed by the House of Commons; and the defender has called him almost directly *a traitor*. He has called him the *patron of traitors*, the *associate of crimes*, which the Lord Advocate put down a few years ago, in a season of great alarm. He has called him the *procurer* of a petition to Parliament, in a mean and disgraceful way, from those *who did not petition*. He is accused of *inflaming the minds of the lower orders* of the people;—and all this, it is alleged, he is, and has done, for the sake merely of *procuring popularity*. Those words and statements,



which I have pointed out to you as having been applied to Lord Archibald Hamilton, are *false, malicious, and injurious*. And, on the subject of the injury done to my client, he will ask you this ingenious question, Has Lord Archibald Hamilton sustained a loss of L. 5, or even 5s. from those publications? Show us a profit and loss account, and then we will see how the balance stands.

If I had had the insolence to apply such language to any of you, you could not suffer any loss; for the more honest a man is, he will suffer the less from unfounded aspersions. I might call the bravest man in existence a liar, a scoundrel, a coward,—he would not suffer from such imputations; but if I did so, I would soon be put down. And yet, to say, that, because there is no suffering of pecuniary loss, there shall be no reparation for what is hurtful to the feelings, and destructive to the usefulness of a man's character, is absurd.

Therefore, this is a case in which we ask damages, not for an actual loss, which we can state in pounds, shillings, and pence; but as a measure of retribution, which will shew to the public at large that you have no sympathy or forgiveness for such writings. We demand damages, great and substantial, as due to the outraged feelings, and injured character, of Lord Archibald Hamilton. What you may be disposed to give I cannot tell; but no Jury, I am sure, will sit and hear such language, and be satisfied with a quibbling apology. I do not know what your political sentiments may be. I sincerely trust, for the justice of this case, you are the staunch adherents of his Majesty's present government. I want no verdict here on political considerations. I appeal, with the greatest confidence, in a question of this kind, to such of you as may be of different political sentiments from those of my client; for I never found any man who did not dislike this style of personal abuse, exactly in proportion as he combined a firm adherence to his Majesty's government, with the character and feelings of a gentleman. I know no men who have so great an interest to put down such a style of personal abuse, as those who are the friends of the present administration. The principles and characters of such men are insulted by saying, "such are the writings that sup-

port your party." I call upon you seriously, therefore, for damages in name of Lord Archibald Hamilton, as if, instead of his *character* having been insulted, and his feelings outraged by these publications, he had been attacked in his *person* in public. I cannot distinguish between the two cases. Such libellers are never to be considered as better than fire raisers, venders of poison, or common stabbers. There is no moral distinction between the one and the other. And if you would give me damages for being knocked down in the public street, I am entitled to tenfold more damages for such attacks in a newspaper, circulated over the country, and that too, as has been pretended, under the influence of a powerful class of men. It is a serious case;—I call upon you for damages. I leave the case with you, and you will pause ere, by a verdict of light damages, you leave it to the country to conjecture what style of writings you approve of, as the free and fair discussion of the public conduct of public men.

Mr M'NEILL.—I wish I may have taken down my learned friend correctly, saying that he now denies that Lord Archibald Hamilton wrote any letter to the Magistrates of Hamilton, or to the factor, in answer to the communication made to him on the subject of the political lecturer; because I observe, that, at a previous stage of the proceedings, the fact was expressly admitted by the pursuer.

Mr COCKBURN.—My denial is this:—At the top of page 6th of the issues there is this passage: "A few years ago a man of a doubtful character advertised a course of political lectures in Hamilton. The Magistrates called him before them, and prohibited him from lecturing within the burgh. In a few days afterwards his Lordship wrote from London to the factor at Hamilton palace, to inquire at the Magistrates, on what account they had presumed to interrupt this political lecturer. The Magistrates pled, that it was because that itinerant had advertised his lecture before asking their liberty to do so; and they were not put to farther trouble on the subject."

The denial I give to this is, that *Lord Archibald Hamilton* never wrote to this lecturer, or to the Magistrates of Hamilton, or to the Duke of Hamilton's factor, on the subject. The lecturer himself wrote to Lord Archibald, but Lord Archibald gave no answer.

LORD CHIEF COMMISSIONER.—The admissions of the particular papers in the issues are not so extensive as they should be, and as they usually are made in such cases in England, where the question is thus put, "Whether the said Number contains the following words and figures," and then the paragraphs are given *seriatim*.

MR JEFFREY.—The printed copy given in the issues, of the paragraphs in the different Numbers of the Beacon from which the extracts were taken, has been admitted to be a true copy. We have put in evidence the whole file of the Beacon; and as it is admitted to be correct, we shall not trouble the jury by reading the passages over again. We put in the different Numbers of the Beacon referred to in the issues.

MR M'NEILL.—The whole of each Number is put in evidence.

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## EVIDENCE FOR THE PURSUER.

DAVID WALKER *sworn*.

*Examined by Mr Jeffrey.*—Were you convener of the trades of Crail in 1821?—A. Yes.

Q. Do you remember in the spring of that year, some time in March, of your writing a letter to Lord Archibald Hamilton?—A. Yes, I did so.

Q. Did you write to him as chairman of the committee of burgh reform in Scotland?—A. I wrote a letter to Lord Archibald Hamilton,—I know that.

Q. Do you remember the date of that letter?—A. No, I do not. I did not keep an extract of it.

Q. Had you ever written to Lord Archibald Hamilton before that time?—A. No, I had not.



Q. Had you any acquaintance of Lord Archibald Hamilton?—A. No, I had not.

Q. You say you kept no copy of that letter?—A. None, sir.

Q. Do you remember the general import or tenor of it?—A. Yes.

Q. What was it?—A. The purpose of it was, I was wishing to see the set of the burgh.

Q. You had previously applied to the Magistrates for the set of the burgh?—A. Yes, I had applied. I saw their's, and I was not satisfied with it. I wanted to have the real set. In my opinion what they showed me was not the true set. I wished to see a correct copy. That was my opinion.

Q. Look at that writing, or imitation of writing, that is there,—can you read that? Is it something to the same effect with the letter you wrote to Lord Archibald Hamilton?—(The *fac-simile* letter of Walker to Lord Archibald Hamilton in the Beacon newspaper shewn to witness).—A. Yes, it was for a set of the burgh.

Q. Is it to the same purport?—A. I could not say. I kept no extract. I cannot say that is my letter.

Q. But what you wrote for, was a copy of the set of the burgh?—A. Yes.

Q. Did you get any answer from Lord Archibald Hamilton?—A. Yes, I did so.

Q. Soon after?—A. I have it in my pocket.

Q. Well, look at the date of it?—A. 20th March.

Q. Did he send you a copy of the set?—A. I got what I petitioned Lord Archibald Hamilton for; he sent it to me.

Q. Was it not enclosed in the letter?—A. It was enclosed in the inside of it.

*The Clerk of Court then read the following letter from Lord Archibald Hamilton to the witness.*

*House of Commons, March 20.*

SIR,—I am quite *surprised* you should be ignorant of the *set of your own burgh*, and apply to me for a copy of it. I have desired our clerk, however, to send you a copy of it, as *officially returned* to the burgh committee; and, when you receive it, I desire you will let me know how far the *practice* of the burgh differs (*if at all*) from the set.—I remain, &c.

A. HAMILTON.

Mr David Walker, *Crail*, N.B.

Q. Did you answer that letter? Did you acknowledge having got the set?—A. Yes, I did so.

Q. Shew the witness that letter, (here the letter of the witness to Lord Archibald Hamilton, dated 28th May 1822, was handed to the witness.)

Q. Is that the letter you sent to Lord Archibald in answer?—A. I cannot say, I kept no extract.

Q. Is that the original letter? Is that your hand-writing?—

A. I believe it is mine, I could not say for certain, but I think so.

Q. Did you get any more letters from Lord Archibald Hamilton?—A. None.

Q. And you received none before, but that of the 20th March, which you have now produced?—A. None.

Q. Did you ever see Lord Archibald?—A. Never.

Q. And never had any communication with him, but writing him that letter, and getting that letter from him?—A. None.

Q. That was the whole of your intercourse with him?—A. Yes.

*The Clerk of Court then read the following letter :*

*Crail, March 28. 1821.*

“MY LORD,—The convener, and deacons, and treds of Crail, gives their kind complements to your Lordship, for sending them the set of their burgh. May Lord, you wish to know the sett that is going on at present, it is just abridment of the sett, they have no amanment that was granted from the convention of Royal burows in ther Books at all, at the last a Election of magistrats, I took a protest agenst them sitting any longer than Two years in ther office, and they took no notice to it, as I had no sett to shoe them at the time, and they carred on the old way as formerly, I sent to Edenburgh for the sett, as it was never granted at me all. I remain,” &c.

*Cross-examined by Mr M<sup>c</sup>Neill.*

Q. Show the witness again the lithographic copy of the letter of 12th March 1821, given in the Beacon. (No. 16. of the Beacon was handed to the witness.)

Q. Is that like your writing?—A. I do not think that like my writing. I can say nothing about that letter. To the best of my judgment, that is not my letter. I do not think it is the same. If I had kept an extract of it, I would have known.

Q. What is the difference?—A. I cannot say. That may be the letter which was so much criticised in the newspapers.

Mr Jeffrey.—The jury is aware the question asked is about the letter given in the Beacon as a *fac-simile* of one of David Walker's letters.

Lord Chief Commissioner.—He said, I do not think this, (the lithographic copy), is the same with mine.

Mr M'Neill.—I asked him if he could point out any difference, and he said he could not.

Witness.—I do not think this is my letter.

Lord Gillies.—He does not think it an accurate copy of his letter.

Witness.—I do not think it is mine.

(The witness was reinclosed at the instance of the defender).

*Mrs Wilson sworn.—Examined by Mr Jeffrey.*

Q. Are you the widow of the late James Wilson, hosier in Strathaven?—A. Yes, sir.

Q. Did you live in family with your husband in the years 1805 and 1815?—A. Was that the year the radicals gaed wast?

Q. No; before that?—A. Yes, sir.

Q. How long did you live with him?—A. Thirty-three years.

Q. And you lived with him all his life?—A. Yes, sir.

Q. Do you remember of your husband ever getting any letters from Lord Archibald Hamilton?—A. Yes, sir.

Q. Do you remember looking among his papers after his death, and finding any such letters?—A. Yes, sir.

Q. Do you know that; was that letter found there? (*shown a letter*).—A. Yes, sir.—I wrote my name on it.

Q. Look at that other one. Is your name on that too? (*shown another letter*).—A. Yes, sir.

Q. Were there any other letters from Lord Archibald Hamilton found in your husband's repositories?—A. No more, sir.

Q. None but these two?—A. None but those two.

Q. Can you charge your memory with the fact of there being no more;—or do you know, whether your husband ever received any other letters from Lord Archibald Hamilton?—A. He received no more, sir.

Q. Was he in the habit of communicating to you the letters at the time he got them?—Witness, (*with great emphasis*), Was James!!!



Mr Jeffrey.—Q. Yes, James?—A. Yes, sir.

Q. And your impression is, that he got no more?—A. Yes, sir.

Q. Did the Sheriff-substitute search your husband's repositories for letters?—A. He broke open my husband's desk, and searched it.

Q. Was that the year before his death?—A. No, sir;—it was after he was apprehended and made a prisoner.

The Clerk of the Court then read the following letters:—

*London, February 12. 1805.*

SIR,—I have only time at present to acknowledge the receipt of your letter, and to acquaint you, in answer to it, that I shall be happy to present the petition of the town of Strathaven to the House of Commons whenever it is transmitted to me. *I rely, in confidence, upon your assurances that the language of the petition is respectful to the House, and the character of the petitioners both loyal and peaceable.* I am, &c.

A. HAMILTON.

Mr James Wilson, Strathaven.

*Chapel Street, 5th May, 1815.*

Sir,—I have only time to say, I shall most willingly *present* your petition for the repeal of the corn bill; but I have *no hope* that the House will pay any attention to it this Session; and should recommend your delaying your proceedings till next year. I am, &c.

A. HAMILTON.

Mr J. Wilson, Strathaven.

MR JEFFREY.—To save the necessity of putting any unpleasant and indelicate questions to this witness, I admit distinctly, that James Wilson, her late husband, the person to whom those letters are addressed, was the unfortunate person who was executed at Glasgow in 1820 for high treason.

THOMAS SOMERVILLE sworn.—*Examined by Mr Cockburn.*

Q. Thomas, you live in Strathaven?—A. Yes.

Q. Were you acquainted with James Wilson, hosier?—A. Yes.

Q. Did you live with him?—A. Yes.

Q. Under the same roof?—A. Yes.

Q. Was there but one door to your two houses?—A. There were two doors.

Q. But you lived close beside him?—A. I wrought in his house.

Q. Were you in habits of intimacy with him?—A. For twenty-eight years.

Q. Was Wilson in the habit of communicating to you upon his affairs?—A. Yes; we wrought hand to hand together.

Q. Did you know if he ever received any letters from Lord Archibald Hamilton?—A. Yes.

Q. How many?—A. Two.

Q. When did he receive those letters?—A. The first was in 1805, and the other in 1815.

Q. Did you ever hear of his having received any other letter from Lord Archibald Hamilton?—A. Never.

Q. Did Wilson say he never received any but two?—A. Yes, he did.

Q. Did Wilson ever show you those two letters?—A. Yes; I have seen them fifty times.

Q. You never saw any others from Lord Archibald Hamilton?—A. Never.

(The letters were shown to the witness.)

*Mr Jeffrey.*—Q. Are those the letters?—A. Yes.

*Cross-examined by Mr More.*

Q. You have said you have seen those letters fifty times?—A. Yes.

Q. Upon what occasions did you see them?—A. Often; when the desk was opened on business; sometimes in the desk, and sometimes in the drawer.

Q. Did you ever hear Wilson read those letters?—A. Yes; and I have read them too.

Q. To other persons?—A. To other persons!—The letters belonged to the town at large.—Every body had a right to them.

*JAMES TURNER sworn.—Examined by Mr Jeffrey.*

Q. Are you a tobacconist in Glasgow, Mr Turner?—A. Yes, sir.

Q. Were you taken up, in the disturbed times, last year, or year before?—A. I was taken up, sir, on the 9th of April 1820, I think.

Q. And kept some time in prison?—A. Yes, sir; I was kept nine days.

Q. Was any thing done to you; were you brought to trial?—A. No, sir.

Q. You were just dismissed?—A. Yes.

Q. Did you think of applying to Parliament for redress for that imprisonment?—A. Yes.

Q. Were you advised to this by Lord Archibald Hamilton; or did you think of that step of your own accord?—A. I denounced it myself from the moment of my confinement.

Q. Did you make any application to Lord Archibald Hamilton to present your petition?—A. Yes.

*Lord Chief Commissioner.*—That was a very proper question. Your former seemed rather a leading one, and out of the usual course.

*Mr Jeffrey.*—Q. Do you recollect when you made that application? Was it by yourself, or by any other person?—

A. It was made by Mr Lang, my brother-in-law. He wrote a letter to Lord Archibald, requesting an interview; and we met with his Lordship, and communicated our case to him.

Q. Had you at this time consulted with any other member of Parliament on the subject?—A. Yes, with Mr Maxwell of Pollock.

Q. The member for Renfrewshire, I believe?—A. Yes.

Q. The application was made by Mr Lang, by letter, I understand?—A. He wrote a card to Lord Archibald.

Q. Lord Archibald was then in Scotland?—A. He was at Hamilton palace.

Q. Was it there you saw him?—A. No; it was at Glasgow.

Q. He sent for you?—A. He sent a card to Mr Lang, and Mr Lang and I waited upon him at the Buck's-head. He said he was there waiting.

Q. And you then stated your story to him?—A. Yes; we had an interview with him about two hours, or two hours and a half, I think.

Q. Did you mention to his Lordship you had applied to Mr Maxwell before?—A. We did not.

Q. Did his Lordship say he would present your petition?—A. We then mentioned the narrative of our case, under the impression Mr Lang and I would petition; and we asked if he would present our petition.

Q. And his Lordship said he would?—A. Yes, if we made up our minds to petition. We had not made up our minds at the time.

Q. Your residence, of course, is in the county of Lanark, which Lord Archibald Hamilton represents?—A. Yes.

Q. And that was your reason for wishing him to present your petition, rather than Mr Maxwell?—A. Yes; he was our county member.

Q. Did you make up your mind afterward to petition?—A. Yes.



Q. Both of you, or you only?—A. Only I. Mr Lang did not.

Q. Mr Lang had also been confined, I understand?—A. He had.

Q. Did you ever see Lord Archibald Hamilton again upon that business?—A. I never saw Lord Archibald but upon that occasion, either before or since. It was upon the 10th of October.

Q. After resolving to petition the House of Commons, did you draw up a petition?—A. I did, sir.

Q. Did any person furnish you with any scroll of a petition, or help you to draw it up?—A. Mr Lang and I drew it up ourselves. I also submitted it to my man of business, Mr M'George, a writer in Glasgow.

Q. Did you afterwards forward that petition to Lord Archibald Hamilton?—A. I did, sir.

Q. Was it some time after the month of October?—A. The petition was dated the 1st of March, but it was the 2d March before I sent it off, and I wrote a letter with it.

Q. You inclosed it to Lord Archibald Hamilton?—A. I put it into the mail-coach office. I sent it off as a parcel, and paid it.

Q. Did you write again to Lord Archibald Hamilton?—A. I did.

Q. When was it?—A. Upon the 3d of March.

Q. To what effect were these two letters?—A. I wrote him, along with the petition, of date the 1st March, though it was on the 2d of that month it was sent off, requesting he would present the petition. I wrote again upon the 3d, after having consulted with Mr Maxwell of Pollock, informing him that I had wrote to twelve members of Parliament about my case, referring them all to the petition in the hands of Lord Archibald; and I gave his Lordship a copy of their names.

Q. You wrote him on the 3d, upon consulting with Mr Maxwell, who was then in Scotland, informing him of what?—A. Informing him I had neglected, in my first letter, to say to what gentlemen of the House I had written.

Q. Did you get any answer to any of those letters?—A. I received no answer to any of those letters; and, in consequence of a note which I received from Mr Maxwell, I wrote again upon the 9th.

Q. What was the purpose of that last letter?—A. That last letter was requesting his Lordship would postpone the presenting of my petition till Mr Maxwell should be on the spot.

Q. Did you receive any answer to that last letter?—A. I did, sir.

Q. Look at that letter. Is that the letter you received?—  
A. It is, sir.

Q. Have the goodness to read it aloud.

The witness read the letter, which was in the following terms :

*Chapel-street, March 17. 1821.*

SIR,—In consequence of your letter of the 9th, I shall postpone presenting your petition till Mr Maxwell returns to London. You will therefore take care to *see* him, and give him all the information requisite upon your case. Your most obedient, &c.

A. HAMILTON.

Mr Turner.

Q. Did you receive any other letter from Lord Archibald Hamilton?—A. None.

Q. And you have not seen him since?—A. I have not.

Q. You have mentioned your meeting with Lord Archibald on the 10th of October, and receiving that letter; was that your only intercourse with his Lordship?—A. The only intercourse I ever had with his Lordship was the interview with him on the 10th of October;—I never saw him since; and I received that letter from him. That was my only intercourse with Lord Archibald Hamilton.

*Cross-examined by Mr M'Neill.*

Q. You mentioned that you had communicated your application to Parliament to several members of the House of Commons, and referred them to the petition in Lord Archibald Hamilton's hands?—A. Yes.

Q. And you referred Lord Archibald Hamilton to them?—  
A. Yes; I gave him a list of their names.

Q. Do you recollect who they were?—A. Yes. I have a note of their names.

Q. Who were they?—A. John Maxwell, Esq.; J. P. Grant, Esq.; J. F. Kennedy, Esq.; Sir Ronald Fergusson; Joseph Hume, Esq.; Sir James M'Intosh; Thomas Creevey, Esq.; George Tierney, Esq.; Sir Robert Wilson; Henry Brougham, Esq.; J. Cam Hobhouse, Esq.

Q. Who was member for the city of Glasgow at that time? Was any of these gentlemen the member?—A. None of these was the member.

Q. Did you write to the member for the city?—A. I did not; I waited upon the Lord Provost at the time. I waited upon him personally at Bothwell castle, along with Mr Lang.

Mr JEFFREY.—I am done with the pursuer's case, except the giving in of the defences in evidence.

The last article of the defences was then read. It is in the following terms: "The defender was never actuated by the motives imputed to him in the summons; in fact, he never saw the statements regarding the pursuer in the Numbers of the Beacon libelled on, previous to their publication. *He, however, reserves his right to prove the truth of one and all of these statements, should that be necessary.*"

Mr JEFFREY.—We now close the case on the part of the pursuer.

Mr M'NEILL.—It is now my duty to address you on behalf of the defender in this very extraordinary cause. The case for the pursuer has been supported this day by very able and very eloquent persons,—by counsel well fitted to cast over the worst of cases a covering, which may hide its defects and imperfections,—and well qualified to weave, out of the worst materials, meshes sufficiently strong to ensnare the unwary. But, Gentlemen, the duty which has been devolved upon me by the defender, is of a very different, and of a much more enviable kind. I have the task devolved upon me, of stripping off that covering,—that gloss which the pursuer has given to his case,—of purifying the cause from that dross with which he has adulterated it,—and of exhibiting it to you just as it really is.

You have heard from the pursuer the history of his own character,—of his consequence,—and of the high situation in which he stands. I am not going to impeach his character,—to derogate from his consequence,—or to deny to him any of the advantages which he derives from his high situation. It is not my wish,—it is not my interest, to do so: and I am sure I could have no foundation for doing so, if I were so inclined. It never entered into the contemplation, either of myself or my client, that the individual or moral character of the pursuer of this action required to be strengthened by evidence of any kind, in order to relieve them from imputations false and malignant, alleged to have been cast upon them in writings, which, I have no doubt, after a careful consideration of the statements and facts set forth in these issues, you will be satisfied are not malicious, and do not convey the imputations alleged:—Nothing of the kind has been attempted, certainly nothing of the kind was intended, by my client.



It has been stated to you, that the pursuer in this case is a Member of Parliament,—held an official situation as Chairman of a Committee for Burgh Reform,—as you were told, appointed upon his own motion,—and a Committee, of which all of you have heard a great deal, out of doors ; the proceedings of which are matter of notoriety, and which you are entitled to take into your consideration without evidence, in weighing the merits of this case. I do not say, —I cannot, and am not entitled to say, that the proceedings of that Committee have been improper,—have been illegal,—have been morally wrong. I would be impeaching the conduct of Parliament if I were to do so. But I say, as to the objects of the Committee, the ultimate ends they had in view, men may, and will differ ; and the good to be obtained from its operations is a mere political, speculative question, on which persons hold different opinions, and are entitled to express the different opinions they hold. Men reason differently from the same premises, and if they arrive at opposite results they are entitled to hold and to express different opinions.

I say farther of this noble pursuer, that he was not merely Chairman of that Committee, but he is, as you were told, a person who takes an active concern in the affairs of the State. He is a **PUBLIC CHARACTER**—one of the most **PUBLIC** characters of whom this country of Scotland can boast ;—and, I say it in praise of his conduct, that he takes an anxious concern in every thing that regards the political state of the country. I may, and others may, differ in opinion as to his political conduct, and the ends he may have in view : I do not wish to impeach his character ; but, I wish to reserve to myself, to you, and to all of us, the right of passing a judgment on his public conduct, on the wisdom of those ends, and on the danger of those views, politically speaking ; and to give to the public a correct idea of their tendency and probable effects.

Then, Gentlemen, the first important circumstance I wish you to attend to, is, that of the **PUBLIC AND POLITICAL CHARACTER** of this nobleman. It has not been denied, that he is the patron of burgh reform. It has been admitted, that the measure originated with him ; and, conceiving it beneficial to the State, he has pursued it with ardour, and has endeavoured to forward it by every means in his power,—fair means, of course, according to his understanding. This being the admitted fact, I wish to direct your attention to the situation of my client, and the charges brought against him.

He admits—he has never disputed—that he was the printer and publisher of the Beacon newspaper ; and although some

allusion was made to that paper, for purposes which I do not clearly understand, this much I may say, that as far as the object of my learned brother is to be directly inferred from his words, he wishes you to cast out of your minds every political feeling that may tend to bias your judgment in determining this case. I most fully acquiesce in this wish. I will not insult you by supposing that your political opinions, whatever they may be, can in the slightest degree affect your verdict. I know not what those opinions are. There may be among you some who look with a favourable eye upon all the actions and views of the pursuer, and there may be among you those who regard them differently. From such of you as are favourable to those views, I expect every thing that is fair, honourable, and impartial. From those who are hostile to his views, I expect the same fairness, honour, and impartiality; but I think it proper to address to them this caution,—that they should not allow themselves to be carried away from what is their strict duty, by the honourable dread of being, out of doors, unjustly suspected of having compromised their consciences for political purposes, but that they will give to the defender the full measure of justice to which he is entitled, and return a verdict such as their consciences and the purity of their minds may dictate.

Having made these remarks, all I ask of you is a patient hearing, and an impartial decision. I am sure you will not deny me the former, and I know you are incapable of withholding from me the latter.

Looking to the general character of the first publication founded upon, which begins at the top of page second of the printed issues in your hands, I must say of it, and of all the articles founded upon in those issues, that it is to be kept in view, that there is no allegation here made, from first to last, that there was the slightest feeling of *malice* in the mind of my client. It is not alleged, and could not be alleged, that he was actuated by *malice*. The pursuer knows well that the defender was *not* actuated by any such feeling; and indeed that he could not be so. Accordingly, he has not alleged he was so. The question put to you is, merely, Whether the defender has *falsely and injuriously* represented certain things regarding the pursuer, to his loss and damage, without calling upon you to look to the motives by which he was actuated, well knowing they were not of a *malicious* nature.

But, you will observe, that the damage claimed is said to have arisen in a manner somewhat curious, and, when you attend to the particular passages which have been founded upon, in a manner somewhat incomprehensible.

In the issue put to you, you will find it stated at the top of page fourth,\* “ And whether the whole or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up, the character and conduct of the pursuer to *discredit and contempt*, and were meant and intended to bring, and do bring, his *loyalty and attachment to his Majesty and to the constitution into doubt and question*,” by doing certain things, viz. “ by falsely and injuriously accusing and representing the pursuer as being guilty (first) of *presumption*; or (secondly) of *purposely creating groundless discontent among the lower orders*; or (thirdly) of being a *worker of public mischief*; or (fourthly) of being an *enemy to the happiness of the lower orders*; or (fifthly) of *trying to place the lower orders at variance with their rulers*; or (sixthly) of *leading certain persons into mischievous and extravagant folly*,—to the loss and damage of the said pursuer.”

First, then, he is said to be guilty of “*presumption*.” That is certainly strange ground for alleging that his *loyalty and attachment to the King and constitution have been brought into doubt and question*; for as to his character being held up to *discredit and contempt*, I shall make this general observation, that if you find throughout the whole publications here alleged to be libellous one statement reflecting on the private or domestic character of the pursuer, I give you full liberty to award as heavy damages against the defender as you please. No one is entitled to invade the privacy of an individual, to enter his domestic circle, and to ridicule or libel him or his family. But I say, on the other hand, with equal confidence, that every one is entitled to canvass, and, if he pleases, to hold up to ridicule, the political and public conduct of a public man. Whoever conceives that the conduct of a public man tends to disturb and injure the state, is entitled to animadvert upon it, to thwart it by ridicule, if he conceive that the most effective means, in short, to oppose and expose it in every way. There is an end to all fair and free discussion, if he is not entitled so to do: therefore, as to the public conduct of the pursuer, (and every word here relates to his public conduct), there can be no doubt every one is entitled to hold it up to that discredit and contempt which he conceives it deserves.

But as to bringing his loyalty and attachment to his Majesty and to the constitution into doubt and question, that is a different and more serious consideration; and it is the one to which I wish you particularly to attend, as it is there the case rests.

\* *Vide* p. 71.



The whole of the first article has been already read to you; and the letter, upon which it is a commentary, was put in evidence. It is a discussion upon burgh reform, certainly a subject of fair political discussion; and, in as far as the patrons and promoters of it exerted themselves, the course they followed is equally the subject of discussion. This article, then, is entitled "Burgh Reform;" and the charge is, that the pursuer's loyalty and attachment to his Majesty and the constitution, have been brought into doubt and question, by the writer falsely and injuriously accusing and representing him as being guilty, in the first place, of "presumption."

Now, where do you find this charge against the pursuer, from first to last, in the passages laid before you? Where is there any charge laid against him of presumption? The only use made of the word "presumption," is in a sentence where that word is applied to the character given to the spirit of reform in the burgh of Crail.—"*Crail, 19th April 1821.* Sir,—Like many other places, this ancient burgh has been much infested of late with what is called the spirit of reform, that is, with the spirit of idleness, *presumption*, and discontent." There is no mention of "presumption," from first to last. And was not the publisher of this paper entitled so to represent the spirit of reform? Is there any one among you not entitled to say, that the spirit of reform is a spirit of idleness, presumption, and discontent? Was that bringing the loyalty of the pursuer into doubt and question? And if he had been called the most presumptuous man that ever trode the face of the earth, (as he certainly is not), would the statement of that fact have brought his loyalty and attachment to the constitution into doubt and question? Certainly not; for he might at the same time have been most loyal.

But, in fact, there is no accusation of presumption here against the pursuer; and if there was, it could not be made the foundation of any action. It is not a libellous or actionable expression. It is a commentary every one is entitled to make on the spirit of reform; and here it is only applied to that spirit of reform.

The second accusation is, that his loyalty and attachment to the constitution are brought into doubt and question, by accusing him of "purposely creating groundless discontent among the lower orders." I again ask you to turn to the passage in the newspaper, and look for such a charge. I wish to see the words if they are there. If they are not there, why were they introduced into the issue? Just for the purpose of assisting the pursuer to maintain an action which is not tenable on its own premises, without resorting to such means,—just for that purpose which the counsel opposite said we would

resort to, of endeavouring to blind you to the true meaning of the passage,—a purpose which it is neither my wish nor interest to attempt, nor my ability to accomplish, if it were both my wish and interest to attempt it.

Look through the paper, and see if there is any passage except one where the word “discontent” occurs. The word “discontent,” just occurs in one place, and that is in the sentence I read a little ago. I shall read the passage again to you. “Like many other places, this ancient burgh has been much infested of late with what is called the spirit of reform, that is, with the spirit of idleness, presumption, and *discontent*.”

Is that accusing the pursuer of “*purposely* creating groundless discontent among the lower orders?” Like the word presumption, it is applied to the spirit of reform in the burgh of Crail. True, it is said, that the spirit of reform is the spirit of discontent,—and many are of that opinion; but does this accuse the pursuer of *purposely creating groundless discontent among the lower orders*? There is no such insinuation, far less any direct imputation of it.

The *third* manner in which the pursuer’s loyalty and attachment to his Majesty and the constitution are represented as brought into doubt and question, is said to be, by accusing him as being a “worker of public mischief.” You will observe, there is a passage about the middle of the second page of the issues,\* in these words:—“I verily believe, however, that we should have much less of this nonsense, and that most people would be easily laughed out of it, if it were not for the countenance which it receives from above stairs. Not to go farther, only look to the conduct of Lord Archibald Hamilton, who has been working for years past *at this kind of mischief*.”

That passage, you will observe, occurs in a discussion on the general political subject of burgh reform, which the writer of the article conceives to be a public mischief. There are many good and loyal persons who conceive that burgh reform would be a great advantage; but there are many others who regard it as a prelude to a more extensive reform, which would end in the greatest mischief. They are entitled to think it mischievous, and to state it to be so.—The defender does so;—and it is that kind of mischief, viz. of promoting burgh reform, which Lord Archibald Hamilton is here accused of. He is not accused of being a general worker of mischief, but of working at his object of burgh reform, which, in the opinion of many, is considered a species of public mischief.

The facts from which it was inferred he was a public worker of mischief were stated;—the facts on which the writer ground-

\* Vide p. 70.

ed his opinion were laid before his readers. Then he drew his own inferences from those facts, leaving others at liberty to draw a different conclusion, if they thought proper. According to his view of them, there could be no doubt of their mischievous result. On the public conduct of public individuals, and the result of facts publicly known, any one, who has the opportunity of judging, is entitled to form his own opinion ;—and, in the opinion of the defender, there could be no doubt as to the result of that conduct, in the present instance, if persisted in.

It is not said, that Lord Archibald Hamilton was conscious he was working mischief, or that he was purposely doing so. The word “ purposely ” never occurs ; but it is said, that what he was doing was, in the opinion of the writer, mischievous ; and it is so, I am sure, in the opinion of the great majority of the people of this country. And there can be no doubt that, entertaining this opinion, this writer was entitled to express himself as he has done.

The *fourth* ground upon which his loyalty and attachment to the constitution is represented as having been brought into doubt and question, is the charging him with being an “ enemy to the happiness of the lower orders.”—Look to the newspaper. Does the word “ enemy ” occur once in it from first to last ? No. It is there said, “ This noble Lord calls himself a *friend* to the happiness of the lower orders.” I have no doubt he thinks he is. But the writer of this article does not say he is their *enemy*.

This is a most improper gloss ;—it is a specimen of what is, from first to last, the object of the pursuer, to represent his inferences as arising from the statements in this newspaper, while they can only be brought out by the introduction of words and sentiments which do not there occur.

Had it even been said that the pursuer was “ an enemy to the happiness of the lower orders ; ” I would have maintained, what is justly remarked in this article, complained of as a libel, that burgh reform leads people to think of their imaginary grievances instead of their own useful and honourable occupations ;—and I would have put it to you, whether he is not in truth an enemy to the happiness of the lower orders who encourages them to waste their time in such unprofitable matters ? That is at least matter of opinion, which the writer might have stated if he had chosen. But he did not go that length ; so that you have here, statements irrelevant, as well as untrue, introduced into the issue.

Then the fifth is, “ Trying to place the lower orders at variance with their rulers.” You will recollect, this was a discussion on the matter of *burgh* reform. The passage relates



to the effect which *burgh reform* has on the *burgesses*, whose *rulers* are the *magistrates*. Is there one of you, who has attended, out of doors, to the progress of the question of burgh reform, and has not observed that it is calculated to set the burgesses at variance with the magistrates? Is it not the object of the discussion to scrutinize the conduct of the magistrates, and the manner in which they have placed themselves in the situations they fill? Is it not the object of burgh reform to change the mode and power of election, and place it in other hands? That is the necessary consequence, and the avowed object of the measure. It is intended and calculated to impress the burgesses with an opinion, that their rulers (the magistrates) are not now placed over them in the manner they ought to be, and that a new system ought to be adopted, by which a different species of election would be introduced, and other men placed over them; in short, to make them dissatisfied with their present rulers.

Then, lastly, "Leading certain persons into mischievous and extravagant folly." That is the way the matter is stated to you in the last part of the issue; but what are the words in the newspaper?—"But surely it ought to be a matter of the deepest self-reproach to Lord Archibald Hamilton that he has led such persons into *this* mischievous and extravagant folly.—If his Lordship likes to waste *his own* time on *burgh reform*, let him do so, and he will only be laughed at for his pains; but, when he leads men like David Walker to *fool away their time in such nonsense*, he deserves much severer treatment." This, then, is the folly: All that was stated before, and all that is stated here, relates to burgh reform, and that is the folly alluded to. And as the whole paper is laid in evidence by the pursuer, I shall first read the following passage, to make this point the more clear: "It would be difficult to mention any thing which has done more mischief of late than the absurd clamour about burgh reform, and the manner in which it has been encouraged by the vulgar agitators who have been employed for that purpose. Concerning the utter folly of it, it is unnecessary to speak; for, to show this, it is quite enough to allude to the sort of people that have been the principal promoters of it. If any thing more had been required for this purpose, it was amply furnished by the manner in which the attempts of the reformers terminated some time ago in this city, which was altogether worthy of the way in which they began." Inducing poor people to leave their useful occupations, is certainly leading them into a species of folly; and it cannot be denied, that it is a mischievous and extravagant species of folly. The writer was therefore entitled to say, that those who promote burgh reform are persons whose

conduct leads to what he conceives to be mischievous and extravagant folly. That is all that he has said.

But is there any thing there to bring the pursuer's loyalty and attachment to his Majesty and to the constitution into doubt and question, unless the pursuer's loyalty and attachment to the King and constitution are brought into doubt and question by the mere fact of his encouraging and promoting reform? To be sure, if it be held that reform is an invasion of the constitution, then it must follow, that by accusing the pursuer of encouraging and promoting reform, his attachment to the constitution is brought into question. But this is an argument which must proceed on the admitted fact, that the cause of reform is hostile to the constitution—that cause of which the pursuer is the prime mover, the great patron, the encouragement of which is the great object of his political life. Unless those things are admitted, there is no insinuation against his loyalty and attachment to the King and constitution.

That is all that is put to you upon this issue by the pursuer. But you heard a great deal from his counsel about other things which are not put to you to be tried at all.

He told you that we could not show that the pursuer had written to David Walker about the "Revolution 1688," and so forth. What letters he may have written to that person, we do not exactly know. David Walker, however, says, he has no recollection of having *received* any but one, although he *wrote* two. But what is said in the newspaper about the pursuer's letters to David Walker, is put as matter of speculation, as matter of course, or inference only, not as matter of positive fact.

It is said that, "*of course*," Lord Archibald Hamilton's letters contain certain expressions in the common cant used upon such occasions,—such as, "indefeasible privileges," "imprescriptible rights," "enlightened burgesses," and "the revolution 1688;" and those words are marked as quotation, not as being taken from Lord Archibald Hamilton's letters, but as being the common cant, and the usual expressions in the speeches and writings of all those who speak and write on burgh reform.

But you will particularly observe, it is not put in issue, whether the pursuer's loyalty and attachment to the King and constitution have been brought into doubt and question, by alleging that he wrote such letters. It is only by the particular statements which I formerly went over, that his loyalty is alleged to be brought into question, or that my client is accused of having published what was false or injurious, as you will see by referring to the issue before you. The matters truly in issue, all relate to his patronage of burgh reform.

It is by being the patron of that measure, that his loyalty and attachment to the constitution are alleged to have been brought into doubt, and that depends, as I have already said, upon the question, Whether burgh reform is an unconstitutional measure or not?

I am not entitled here to prove what Lord Archibald Hamilton himself may have said in Parliament. But do you not hear, out of doors, that persons upon both sides accuse one another of attacking and invading the constitution? Are not *ministers* continually accused of invading and destroying it? But in this discussion about reform, there is not a word said insinuating that the pursuer was disaffected to the constitution, unless that is to be inferred from the fact of his being the patron of burgh reform. As to this fact, it is needless for me to impress upon you more strongly than the pursuer himself admitted, the patronage which Lord Archibald Hamilton gives to this measure of burgh reform in Parliament, and the encouragement it derives from his countenance.

Nor is it any detriment to my argument to say, that it was merely as chairman of the committee of the House of Commons, that David Walker addressed his Lordship. My learned friend Mr Jeffrey asked David, whether it was as chairman of the committee of the House of Commons that he addressed his letter to Lord Archibald Hamilton, but David did not say "yes;" he only said, in answer to the question, "I wrote *Lord Archibald Hamilton* at any rate." I doubt whether David Walker knew that Lord Archibald Hamilton was chairman of that committee; and the letter, of which a fac simile is before you in the newspaper, (and as to which, although he did not think it his own, he yet could not say wherein it was different from his own,) is not addressed to his Lordship as *chairman of the burgh committee*. It is addressed to "Lord Hamilton," and concludes in those very humble and submissive terms, "your Loal Sugigts (meaning *your loyal subjects*) Convener and Trids (meaning *trades*) of Crail," which shows pretty well the opinion entertained of Lord Archibald Hamilton by these persons. They had an idea that he was to be applied to, not as chairman of the committee, but as the patron, lord, and master of that great question of burgh reform, which certainly he has a right to patronize, according to his own view of what is proper, but which he promotes in a way, and with a zeal, which, in the opinion of many persons of sound judgment, is not altogether worthy of him, and which would lead to consequences of the most pernicious kind to society at large.

I now call your attention to the SECOND issue. It relates to two matters. The first is, the correspondence with a person



of the name of Wilson; and the second is the petition of Turner. There are a number of questions put with regard to both of those matters, which I shall follow in their order.

The inferences which the pursuer deduces in this second issue are stated at the top of page seventh.\* They are as follows: "And whether the whole or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up, the character and conduct of the pursuer to discredit and contempt, and were meant and intended to bring, and do bring, his loyalty and attachment to his Majesty and to the constitution into doubt and question, by falsely and injuriously accusing the pursuer (first) of corresponding for improper and unconstitutional purposes with people of low character on political subjects, or (second) of opposing bills in Parliament merely in order to acquire popularity, or (third) of being willing to open a correspondence with any person who can be prevailed on to enter into political measures, or (fourth) of being regardless of his high birth, or (fifth) of corresponding with people of a suspicious cast on political subjects, or (sixth) of having procured from a person of the name of Turner a petition complaining of the arbitrary conduct of the Lord Advocate, or (seventh) of having induced the said James Turner to apply to Parliament, or (eighth) of being the noble correspondent of Crail radicals and Strathaven traitors, or (ninth) of having called in question the conduct of the Lord Advocate, although the conduct of that public officer had never been called in question, except by the patrons or associates of crimes,—to the injury and damage of the pursuer."

In the *first* place, then, his loyalty and attachment to his Majesty and to the constitution are said to be brought into doubt and question, by accusing him of "corresponding for improper and unconstitutional purposes with people of low character on political subjects." I beg your attention to the words, because the system of the pursuer throughout has been to introduce words of his own into the issues, for the purpose of putting a false construction on the meaning of the writer. Observe particularly the words *for improper and unconstitutional purposes*, and then I ask you to turn to the passages themselves in the newspaper, and see if you can find any such words, or any thing to bear out such an inference.

In that part which relates to his correspondence with Wilson, it is said, that the pursuer corresponded with people of low character on political subjects; and probably this is what is alluded to in the issue. But I wish you to observe,

\* *Vide* p. 73.

that the only mention made of people of low character is in this paragraph of the paper. After having talked of his correspondence with David Walker of Crail, it is said, "But this is not the only instance in which the noble Lord has corresponded *with people of low character* on political subjects." Then it goes on to give another instance; for it is a remark applicable to the whole of this publication, that whenever any statement is made, and an inference is drawn from it by the writer, he states and puts the fact fully before his readers, to enable them to draw their own inferences, whether they happen to differ from, or agree with his. Now, listen to the ground of the inference here, and particularly observe there is not a word about *improper*, or *unconstitutional purposes*. "When his Lordship, and other of the opposition members, were *endeavouring to acquire popularity*, by opposing the *corn laws*; and when James Wilson, then hosier in Strathaven, who was lately executed at Glasgow for treason, was at the head of a mob of the lowest people in that town, burning the effigies of Lord Castle-reagh, and others who differed in opinion from the opposers of these laws, Lord Archibald Hamilton corresponded with Wilson *on that subject*."—"On that subject;"—that is to say, he corresponded with Wilson *on the subject of the corn laws*. It is not said, nor even insinuated, that it was for an *unconstitutional* purpose. It was in regard to the *person* with whom he corresponded, not the subject of his correspondence, that his Lordship's conduct was called in question by the writer of the newspaper.

It was stated by his Lordship's counsel to be most laudable, and some may conceive it to be so, to correspond with the lowest of the people on political subjects. I do not say it may not be so in some instances; but still it is matter of opinion and question. With whom he did correspond, or about what, is, in the opinion of some, perhaps of little consequence. And, although you may all be of opinion he did right in corresponding with Wilson and with Walker, that is not an opinion by which alone you are to decide the case. Though you may have thought it a right course for him to pursue, I may not have thought so;—the writer of this paper may not have thought so; and he, as well as you, was entitled to express his opinion on a matter, which is a fair subject of question; and though you should happen to differ in opinion from him as to the propriety or impropriety of corresponding with one person or another, that is no reason why you should award damages against him.

As to the allegation that he corresponded with Wilson on the subject of the corn laws, is not that proved? His letters were read in evidence. He undoubtedly then did cor-

respond, on the subject of the corn laws, with that person, who was executed at Glasgow as a traitor. But this correspondence is not alleged, indeed, to have been for an *unconstitutional* purpose. Quite the reverse. The writer, indeed, thinks it was beneath the character of Lord Archibald to correspond with *such a person* on such a subject. But that is matter of opinion. Whether the opinion expressed by him, that this was beneath Lord Archibald, is right or wrong, is of no consequence. The fact, that he did so correspond, is established; and that the writer did not approve of his doing so is not wonderful.

As to its being asserted that Wilson was a poacher, I need only say, that this is not before you. It is not one of the grounds on which it is said, Lord Archibald was held up to ridicule and contempt, or his loyalty and attachment to the constitution brought into doubt and question. It is not in the issue, and is not of any consequence. If it had been put to you in the issue, whether the defender had falsely and injuriously represented the pursuer as having corresponded with a person who had been prosecuted by the Hamilton family for poaching, I would have been prepared to prove, that Wilson stood in that situation, that he had actually been prosecuted for, and convicted, I believe, of that offence, more than once. But nothing of that is put in the issue.

The only question then is, whether the pursuer is *falsely* represented as having corresponded with low characters on political subjects? And it is *proved*, that he corresponded on the subject of the *corn laws* with Wilson, who was a miserable hosier in the village of Strathaven, and was afterwards executed for treason,—for, the fact of Wilson having been executed at Glasgow, is admitted, and that is a tolerable proof of his character, without the necessity of proving what everybody knows, and nobody can deny, that he belonged to the lowest class of society.

But, so far from alleging that the pursuer's correspondence was for unconstitutional purposes, or for the purpose of exciting disaffection or sedition, the particular passage founded on as libellous, concludes thus:—"But when this lecturer and James Wilson, and their followers, began in 1819, to talk of dividing large estates, and some of their wives who were far advanced in pregnancy, boasted that they would lie in, in the course of a few weeks, in the palace of Hamilton, the noble family became more alive to their danger, and instructed their factor and the local magistracy *to raise and collect a force to protect the palace, and to preserve the peace of the county;*" which is just saying, that as soon as Lord Archibald Hamilton perceived that the conduct of those persons was tending



towards an invasion of the constitution, he raised a force to protect the peace of the county. This extinguishes all idea that it was for unconstitutional purposes that he corresponded with those persons,—for, as soon as he saw their conduct tend to injure the peace of the county, he raised a force for its protection.

You see, then, how contemptible is the attempt of the pursuer to convert the words of the newspaper into an accusation, that he corresponded with Wilson for *improper and unconstitutional* purposes, when, in fact, it is expressly stated, that it was a correspondence merely on the subject of *the corn laws*.

But, the next ground of libel is still more extraordinary.—The defender is charged with accusing the pursuer of “opposing bills in Parliament, *merely* in order to acquire popularity.” Here again is an unfair attempt to torture the words of the writer. If you look at page 5, you will find it there stated, in regard to the era of some particular event, that it happened “when his Lordship and some others of the opposition members *were endeavouring to acquire popularity by opposing the corn laws*.” Was there any thing improper or unfair in saying, that Lord Archibald Hamilton was endeavouring to acquire popularity, by opposing the corn laws? Is there any thing wrong in saying, that a man wishes for popularity, and does certain things with the view of obtaining it? Will Lord Archibald Hamilton say, that he *despises* popularity, and that opposing the corn laws is not a fair and constitutional mode of obtaining popularity? Will he say this? He will not venture to say so. When it is said he was endeavouring to acquire popularity by opposing the corn laws, it can only be inferred he was pursuing that which he was entitled to pursue, by those fair means which he was entitled to adopt. The means he adopted are expressly stated, viz. opposition to the corn laws. Would it be libellous to say, that a Member of Parliament was looking for popularity, and using legal and constitutional means to obtain it? Yet that harmless, or rather creditable statement, would be a libel if the words before you are one. The question of the corn laws was one of great national interest; and it is seldom that Lord Archibald Hamilton has a better opportunity afforded him, than the occasion alluded to, of endeavouring to acquire popularity. In the minds of many of the people, it was supposed to be a question between the landed interest of the country and the rest of the community. No question, therefore, could be better fitted for Lord Archibald Hamilton’s endeavours to acquire popularity, among a certain class of persons, than that of the corn laws. It is not alleged or insinuated he was not sincere

in his opposition to the corn laws as a bad legislative measure. I am convinced he was, and that he thought himself in the course of fairly obtaining popularity by his opposition to those laws.

If, indeed, it had been said, that Lord Archibald Hamilton, regardless of the interest of the country, and conscious that those corn laws would have been beneficial to the state, had nevertheless *opposed* them, *merely for the purpose of acquiring popularity*;—then there would have been ground, perhaps, for maintaining that there was a libel. But that is not said: The statement is generally, that Lord Archibald Hamilton, and others of the opposition members, were endeavouring to acquire popularity by opposing the corn laws,—by constitutional means, of course, must be inferred.

The difference between accusing a person of acquiring popularity by fair means, (if it be an accusation at all), and accusing him of endeavouring to obtain popularity by unconstitutional means,—by a dereliction of his public duty, and a sacrifice of his conscience, are very obvious, and may be illustrated by reading to you from another paper the following paragraph, which is in every respect a contrast to that of which Lord Archibald Hamilton complains:—"On Thursday se'night, it was moved in the Common Council of London, that the thanks of that body should be presented to the Lord Mayor's chaplain, the Reverend Mr Bates, for a sermon preached before the Lord Mayor, the Judges, &c. on the 8th of June last. The motion was made in conformity with the usual practice on such occasions; but we are extremely happy to have to inform our readers, that it was *negatived* by a great majority. The reverend gentleman, *no doubt with the praiseworthy motive* of recommending himself to some 'fatter benefice,' *instead of attempting* to enforce the great and salutary truths of Christianity on the minds of his hearers, had, it appears, entertained them with a political harangue in the very highest style of ultra-toryism." This passage accuses the reverend gentleman of disregarding and sacrificing his duty as a minister of religion, to the influence of unworthy motives,—of withholding from his hearers the great and salutary truths of Christianity, and substituting in place of them a political harangue; and this he is said to have done from selfish, sordid motives.

But nothing of that kind is said of Lord Archibald Hamilton. It is merely said, that, when he and other opposition members were endeavouring to obtain popularity, by opposing the corn laws, certain things happened; but it is not intended thereby to impeach his sincerity or his loyalty; or his attachment to the constitution.

The *third* mode in which, under this second issue, the defender is accused of bringing his Lordship's loyalty and attachment to his Majesty, and to the constitution into doubt and question is, by saying, that he is "willing to open a correspondence with any person, who can be prevailed on to enter into his political measures." This is an extraordinary mode of accusing a man of disloyalty and disaffection to the constitution. It is not here said, that he himself is disloyal or disaffected to the King and the constitution, nor even that his views or measures are so; and yet this, you are told, is to be inferred from saying, that he is willing to correspond with any one who can be prevailed upon to enter into those measures, which in themselves are not disloyal, and are not the consequence of disaffection!

If you look to the passage itself, you will find that what is there stated, is not said of Lord Archibald alone, but of *the whole party* to which he belongs. "His Lordship, and *others of his political party*, seem willing to open a correspondence with any person who can be prevailed upon to enter into their measures, and to facilitate the views of their party." If he holds that it is not derogatory to his character to hold communication with persons in a low rank of life, and write letters to them on political subjects, then, surely, he cannot consider himself aggrieved, by being told, that he was willing to correspond with those who could be prevailed upon to enter into the measures, and to facilitate the views of his party; and least of all can any fault be found with this allegation, by the person *who is proved to have been*, and who, to-day, boasted of having been, *the correspondent* of David Walker of Crail, and of James Wilson of Strathaven.

In the next place, his loyalty is said to be brought into question, by accusing him of being "regardless of his high birth." This is a complete perversion of the meaning of the writer. At the bottom of page fourth of the issue there is the following passage:—"It might be expected, that the son of the first Peer of Scotland, whose family, only a few generations past, had but one feeble life between them and the Crown, and who represents the most populous county in Scotland, would not *so far* forget his high birth, and lay aside his family pride, *as to correspond with a prattling presumptuous tradesman, so ignorant and illiterate, as this convener of Crail evidently appears to be.*"

Is not this a fair observation? The fact from which the inference is drawn is fairly stated, and the degree to which the pursuer is said to have forgotten his high birth is distinctly set before you. The writer states as a fact, that the pursuer corresponded with a prattling, presumptuous, ignorant, illi-



terate tradesman ; and he tells you, that, in his opinion, this was to a certain extent forgetting his high birth, and laying aside his family pride ; but, is this saying he was disloyal and disaffected to the constitution ? Every person was entitled to judge for himself, whether this correspondence was derogatory to Lord Archibald Hamilton's dignity or not ; and the writer has given you his opinion of it.

The next ground upon which it is said that his loyalty has been called in question, is by accusing him of "corresponding with people of a *suspicious cast* on *political subjects*." The particulars of the correspondence have been already given. The *corn laws* are unquestionably a *political subject*. So is *burgh reform*. That Wilson was a person of a *suspicious cast*, there is no doubt. That Lord Archibald Hamilton did at least receive two letters from Walker, and two from Wilson, both of which he answered, *is proved*. That he did receive a letter from a political lecturer, *is also admitted*. He therefore *corresponded with those persons on political subjects* ; the subjects specially mentioned ; and that is all that has been stated in the Beacon.

The rest of the accusations under this issue, are made up of inferences deduced from the statements regarding the petition of Turner ; and there the chief point to be considered is, whether Lord Archibald Hamilton "procured from Turner a petition, complaining of the arbitrary conduct of the Lord Advocate." Of the merits of the petition itself, I say nothing ; of the tendency of it there can be no doubt. Lord Archibald Hamilton says, it is not true that he "procured" any such petition, or "induced Turner to apply to Parliament." As to the fact of his having *procured* that petition from Turner, I think there can be very little doubt. You have it in evidence before you, that Turner conceived an intention of petitioning Parliament ; that he communicated this intention to Lord Archibald Hamilton by letter ; that his Lordship went to Glasgow, and wrote a note to Turner or his brother-in-law, Lang, requesting an interview, and that those two persons went and waited upon him, and had an interview with him, of *no less than two hours and a half*, on the subject of this petition, then only in embryo. Turner tells you distinctly, that at this time he had not made up his mind to petition, but that Lord Archibald Hamilton told him, that provided he would make up his mind to do so, he, (Lord Archibald), would undertake to present his petition to the House of Commons. And after this interview, Turner did make up his mind, and did petition, and Lord Archibald did present the petition in the House of Commons, and did support it there. These are the facts.

Now I ask, is this not *procuring* a petition? What is meant by "*procuring*?" for the pursuer has laid great stress upon that word, though it is not usual to go so critically to work with every word which occurs in a hasty commentary in a newspaper on a debate in the House of Commons. But in order to ascertain the true meaning of this word, I had recourse to a very common authority, Johnson's Dictionary; and there I found, that to "*procure*" means to "*acquire*;" and from the same authority learned, that "*acquired*" means "*gained by one's self, in opposition to those things which are bestowed by nature.*" Nature has certainly been extremely bountiful to Lord Archibald Hamilton, but I much doubt whether she showers down on his head petitions to be presented by him to the House of Commons. These he must himself acquire, and he certainly did *acquire*, that is, he did *procure* this petition. It is not averred that he took any particular pains to instigate Turner to prepare this petition, or that he himself drew it up. The word complained of, imports nothing more than that he procured it in the way in which such petitions are generally procured.

The pursuer next finds fault with the allegation, that he had *induced* Turner to apply to Parliament. But I ask you, Whether it is not now plain that he did *induce* Turner to apply to Parliament? Turner had not made up his mind to petition. Lord Archibald sent for him;—had an interview of *two hours and a half* with him on the subject;—discussed it, of course, to the uttermost;—and concluded with telling him, "You have not made up your mind to petition;—but if you do so,—I will present it." What was that but holding out an inducement to Turner to petition? It was saying, in pretty plain terms, Do you prepare and send up your petition to me, and I will present it. Accordingly a petition for Turner was sent up to and presented by Lord Archibald Hamilton.

I am not entitled to prove what Lord Archibald said and argued in support of this petition in the House of Commons; but I suppose few of you are ignorant of it. And when the support he gave it there is coupled with the interview which he is proved to have had with Turner on the subject for the space of two hours and a half, before Turner adopted his resolution to petition, it is impossible to entertain a doubt that Lord Archibald, in the plain meaning of the term, *induced* that man to petition. If Lord Archibald Hamilton had but said, "I disapprove of it," no petition would have been presented. He certainly did not say so;—and the petition is got up after two hours and a half spent with Lord Archibald Hamilton in privately discussing the subject of it. Then I

say, broadly, that it is completely proved, by the evidence you heard to-day, that Lord Archibald Hamilton *procured this petition, and induced Turner to apply to Parliament.* And it is the statement of *this proved fact* that he complains of as a libel, bringing his loyalty and attachment to the King and the constitution into doubt and question!

The next expression complained of is, “The noble correspondent of Crail radicals, and Strathaven traitors.” These words were read to you by my brother Mr Cockburn in a tone of great exultation. He triumphed over them as conclusive of his case. He described them as the most monstrous libel he had ever seen,—words that required no commentary. But if you will attend to the manner in which those words are used, and particularly in connexion with what goes before them, you will not, I should think, be disposed to put such a construction upon them. It has already been proved to you, that Lord Archibald Hamilton corresponded with David Walker of Crail, who, if he was not a *radical*, was at least a *burgh reformer*. It has also been proved to you, that he corresponded with James Wilson of Strathaven, who was convicted of treason, and executed as a *traitor*. The subject of that correspondence has already been proved to you to have been a political and popular one at the time; and it has farther been proved to you, that his Lordship’s letters were not considered as intended for the solitary perusal of Wilson but were held to be *the common property of the whole town of Strathaven*, and that Wilson was merely the organ of communication between his Lordship and the populace of that place. In short, then, *he corresponded with the whole town of Strathaven* on a subject of a political nature; and specially he corresponded with David Walker, the *Crail Reformer*; and James Wilson, the *Strathaven Traitor*.

The next allegation complained of, is that of his having “called in question the conduct of the Lord Advocate, although the conduct of that public officer had never been called in question, except by the patrons or associates of crimes.” Those words, as usual, are not fairly given in the issues. But, in the first place, you will observe what Turner told you. He told you, that the petition which he was induced to present, and which was procured from him in the manner already described, complained of his having been imprisoned improperly by the Lord Advocate on a charge of high treason, and detained for a period of *nine days*, which my brother, in pursuance of that hyperbolical style of pleading by which the case of the pursuer has been distinguished, magnified into *a month*. Although I cannot produce the petition to you, as it is not now within my reach, still you have enough



before you to satisfy you that it complained of arbitrary conduct on the part of the Lord Advocate, and called his official conduct in question in the most serious manner. The share which Lord Archibald Hamilton took in presenting that petition, and in supporting it in the House of Commons, warrants any person in saying, that he too called in question the conduct of the Lord Advocate on that occasion.

But my brother says, that Lord Archibald is accused of being the patron or associate of crimes. Now, whether it be possible to conceive a more wanton and purposed misreading than this, I leave you to judge. When you look to the passage from which this is taken, you will see that, so far from accusing Lord Archibald Hamilton of being the patron or associate of crimes, *it states the very reverse*. It holds him up in contrast with the patrons and associates of crimes, and warns him not to do what they did, lest an imputation might fall on him, which he did not otherwise deserve. It warns him not to take a step which might, perhaps, in the minds of some, assimilate his conduct to that of those persons who were as yet the only ones to call in question the conduct of the Lord Advocate. The words used are,—“On this occasion, Lord Archibald Hamilton has really chosen his ground singularly ill; and, in doing so, has shown either the most lamentable ignorance of the public opinion, or the most extraordinary contempt of it. He *ought* to know, that the conduct of the Lord Advocate, at the time he alludes to, was such as has insured the lasting gratitude of the country, and that it has never been called in question, except by the patrons and associates of crimes, which could not have been speedily subdued except by the most remarkable union of firmness and lenity.” That is, *till now* his conduct has not been called in question except by such persons; and Lord Archibald Hamilton ought to have known this, and to have taken care not to have acted as he did. Had he known it, he should not so have acted; at least, such is the opinion intimated in the passage I have read. The conduct of the Lord advocate, on the occasion alluded to, is well known to all of you to have been such as is represented in that passage. The most virulent opposition prints in this country acknowledged and lauded the humanity and forbearance of that public officer on the occasion alluded to; and none ventured to call his conduct in question except Mr Turner, and others who, like him, were either suspected to be, or actually were, the associates or patrons of crimes which could not have been speedily subdued except by the most remarkable union of firmness and lenity. The passage complained of warns Lord Archibald Hamilton of the danger of the course he is pursuing in taking Mr

Turner by the hand. This is the plain and obvious meaning of the passage. It can bear no other construction in the mind of any one capable of reading, and of fairly understanding what he reads. And if this were not the necessary, but only the fair and liberal, interpretation of the passage, you would be bound so to construe it, especially where there is no allegation of *malice* made against the defender.

On this subject of Turner's petition, I have one remark to make. The conduct of the Lord Advocate and of Lord Archibald Hamilton, in regard to this matter, was the subject of much discussion at the time; and especially the conduct of the pursuer was commented on and discussed in the public prints in both ends of the island—in England not less severely than in Scotland. But his Lordship did not venture to pursue in England any such action as the present. He knew well it was in vain for him to try such an action there; and that the persons who there discharge the important duty which you are now discharging here, were too much accustomed to handle matters of that kind, to receive with any favour the extraordinary and preposterous demands which he now makes upon you. But, by coming here with his suit, he hopes he may obtain from your inexperience what he knows the experience of jurymen in the other end of the island would have indignantly denied him. But great experience is not necessary to the proper discharge of your duty to-day. All you have to do is to put a fair and liberal construction on the passages which have been read to you. And, if you can arrive at the conclusions to which the pursuer would lead you, I must confess that I am totally blind to the import of those passages of which he complains.

The next article of charge is in the THIRD issue, and relates to the same matter of Turner's petition. The pursuer's loyalty and attachment to the constitution are again said to be called into doubt and question, by "accusing him of presenting to the House of Commons a petition in the name of James Turner, who was confined for high treason, which petition was malicious, and *was not the complaint of Turner*, but was, in truth, the complaint of Lord Archibald Hamilton himself." On turning to the passage in the newspaper, you will find, as usual, that the pursuer has made very free with the words. Look now at page seven of the issues.\* The true reading there is,—“We have not for a long time observed any thing more *malicious and stupid* than the petition presented by Lord Archibald Hamilton to the House of Commons, in the name of James

\* *Vide* p. 74.

Turner, who was confined for a few days last spring upon a charge of high treason. Every one knows how these petitions are got up; we shall not therefore insult our readers by an attempt to prove what all of them must know well enough, that this is, in truth, the complaint of Lord Archibald Hamilton himself. This noble person is already well known as one of the drudges of the Whig faction," and so forth.

The *petition* is described as *malicious* and *stupid*. That was the opinion which the writer entertained of *the petition*, and my brother told you, that he did not care how the House of Commons disposed of that petition. You all know, out of doors, that the petition was not considered deserving of much attention, and did not obtain for the petitioner the redress which he sought. He complained of great misconduct on the part of the Lord Advocate, and he particularly called for an acknowledgment of his innocence of the charges which had been made against him at the time of his imprisonment. But his grounds of complaint were completely refuted. He was told, that it was impossible for those who knew the facts to pronounce him innocent. And, after this, I ask whether his petition may not justly be said to be both *malicious* and *stupid*.

But the sting of this passage is said to consist in the allegation, that the complaint *was not the complaint of Turner at all*, but the complaint of Lord Archibald Hamilton. Now, it is no where said that it was *not* the complaint of Turner, although undoubtedly *it is said* that it was *the complaint of Lord Archibald Hamilton*. But observe how that is said, "Every one knows how these petitions are got up, and that this is in fact the petition of Lord Archibald Hamilton himself." What does this mean, but that Lord Archibald Hamilton and his party espoused and adopted this petition, and made it their own, by the support and encouragement they gave it? Was it not got up after an interview of two hours and a half with Lord Archibald Hamilton, in a tavern in Glasgow, and presented and supported by him and his party? And does not the list of names which was read to you shew pretty clearly whether this was intended to be made a party question, yea or nay? Lord Archibald Hamilton was referred to a number of persons as his fellow-combatants in support of the petition, and they again were referred to him as the leader and mover who was to guide them. These persons, thus associated, are all known to be on one side of politics,—all opposers of ministers,—all or most of them taking part in the discussion of that question so strongly espoused by Lord Archibald Hamilton,—and some of them avowed and staunch supporters of reform in its broadest and wildest meaning, and who have openly and



publicly proclaimed their attachment to that cause. Is it then too much to say, that this was the petition of Lord Archibald Hamilton and his friends, *as well as* that of Turner? And this is all the length that the statement complained of goes. It does not exclude Turner from his share in the scene, but allows him a just proportion along with Lord Archibald Hamilton and his friends, who, to the exclusion of the member for the city in which the oppression or outrage was said to have taken place, and who was the person naturally to be applied to, were to have all the honour and glory of this undertaking. So it may be truly said to have been his Lordship's petition.

The next obnoxious passage is in regard to Lord Archibald Hamilton having "so far degraded himself as to become the patron of suspected patriots." After all you have heard, it is almost unnecessary for me to say, that to the extent at least of presenting and supporting his petition in Parliament, Lord Archibald Hamilton did patronize Turner; and it is equally unnecessary for me to remind you, that Turner was a suspected patriot. His patriotism was suspected,—his loyalty was suspected,—his attachment to the constitution was suspected,—he was accused of high treason. It cannot be disputed that Lord Archibald Hamilton knew all this. It formed the ground and essence of the petition, which he undertook to present, after so much deliberation and consultation. And I have already said, that when the petitioner went to the House of Commons, and Lord Archibald Hamilton and the other supporters of the petition called on the Lord Advocate to declare the innocence of Turner, his Lordship refused to do so, because it was impossible for him, or for any one who knew the facts, conscientiously to do so. There the matter rested, and the House of Commons refused the petition,—at least they gave Turner no redress for the grievances complained of.

There is yet another issue. It is the very last words of the printed issues in your hands. They represent Lord Archibald Hamilton as "unceasing in his endeavours to bring himself into notice, and certainly not at all scrupulous as to the means of doing so." I am at a loss to see any imputation on the loyalty of Lord Archibald Hamilton in that passage, or from whence it can be inferred that there is any thing *actionable* in it. The *means* by which Lord Archibald Hamilton has "*unceasingly endeavoured to bring himself into notice,*" are before you; and have been often enough alluded to. Whether he has any *scruples* regarding those means, I know not. But I presume he has none, or he would not pursue

them. But it is always a matter of fair comment and fair inference, whether a person who is bustling incessantly to bring himself into notice, is particularly scrupulous in his means of doing so. The passage, however, from which these words have been taken, will, when fairly quoted, explain itself. It is in the 22d Number of the Beacon, and is in these terms: "Our readers must have observed, that we have thought it necessary to comment occasionally on the conduct of Lord Archibald Hamilton, and to examine into the real nature of his *political* character and pretensions. Every one will allow, that if it is right that *public* men should be subjected to such an operation at all, this noble Lord is one of the fittest subjects for it. He has been unceasing in his endeavours to bring himself into notice; and certainly not at all scrupulous as to the means of doing so. *It has been his pleasure to journey towards immortality, along the well frequented and beaten path of reform.* This path may have its recommendations, but luckily has also its disadvantages; and among these, it is certainly not the least to such persons as Lord Archibald Hamilton, that the *public* lives of all who pursue it, are understood to invite or to challenge the strictest scrutiny."

Such, then, are the means alluded to. His choice of the path of reform as the road to public notice, his becoming the patron of burgh reform, (whether he has had any scruples on that subject or not, you will judge), is what the writer alludes to, and comments upon, in terms which can be offensive to no one, and which certainly are not calculated to bring the pursuer's loyalty and attachment to the constitution into doubt and question.

I have now gone through all the allegations laid in the issues; and the question for your consideration is, whether the passages in the newspaper complained of, when read with the context, support the inferences of the pursuer, and contain reflections on Lord Archibald Hamilton, as disloyal, or disaffected to the King and constitution. I confess I am at a loss to discover how any of the inferences of the pursuer can be deduced from the passages of which he complains. I see nothing in these passages, but a fair commentary on the public conduct of a public man. I cannot discover any thing touching the private or domestic character of the noble pursuer. I do not hesitate to say, that if his private character, or his moral conduct had been attacked, as there would of course have been no grounds for doing so, so there could have been no justification of the libel. But, with equal confidence, I say, on the other hand, that the political and public conduct of any man is the fair subject of criticism, observation, and com-

ment of every kind ; that the conductors of political works are entitled to discuss the merits of the political schemes and measures and conduct of all public political men ; and where they disapprove, to combat by argument and by ridicule ; where they see mischief likely to accrue to the state, to endeavour to avert that mischief by every means in their power. If the politician, as generally happens, is too stubborn to relinquish his own views, it is proper to expose their evident folly, or their hidden mischief, to others. And whether the writer who undertakes that task is himself mistaken or no is of no consequence ; he is entitled to enter the field of political discussion, and it is only by encouraging and protecting that free discussion, that the public can ascertain whether the schemer or the critic is in the end correct.

I am sure there is not one of you who does not daily read in the public prints attacks on the political conduct of men on both sides of politics, infinitely more severe than those which form the subject of the present action. I do not wish, and I am not entitled, to endeavour to justify one libel by quoting another,—to say that the writing I defend is no libel, because another writing equally libellous has been allowed to pass unpunished. But I am entitled to say, that there is a certain freedom of discussion allowed in political matters, which varies, in some degree, according to the taste and temper of the times, and which always must be, in some measure, regulated by public opinion.

The interest and the right of all men to comment upon the political and public acts of public men cannot be disputed,—and there is an end to all fair and free discussion of public measures,—there is an end to all controul over the acts of public men, whenever that right and interest are destroyed or suppressed. In the present times, you cannot turn up a file of a newspaper, or a volume of a periodical political work, in which you do not find in every page commentaries on the conduct of men on either side of politics, infinitely stronger and more harsh than those observations which are to-day prosecuted as libels.

I am not going to put in evidence any such publications ; but I appeal to your own recollection, of what you every day meet with, in support of the observations I have made. All of you, who are in the habit of reading the reviews, and other works of the day, must be familiar with such passages as the following :—“ Of this perilous experiment we shall now say nothing ; because its adventurous authors, Mr Pitt and Mr Perceval, are no more. Neither shall we enlarge on the attempts made, with too much success, by them and their adherents, to blacken the character of the illustrious person now at



the head of affairs ; because he has generously forgiven them, and apparently forgotten them too, somewhat more completely than the country has. Nor shall we advert at all to the *personal* qualifications of this eminent individual, or to the estimation in which he is holden by his people, or the public sentiments touching the other branches of his illustrious house ; *because we stand in awe of his legal advisers and their powers.* But we may advert to the state of *his ministry.*—The *persons of his servants are not sacred* ;—there is nothing inviolable in the author of the Sheldt Expedition,—the projector of the campaign to Paris,—the maker and the breaker of the peace of Amiens ;—in Mr BRAGGE, and in the LORD WESTMORELAND : They are all men, and clothed with their full shares of human infirmity.—They are subjects too ; and they may live to learn that they are responsible in their *persons*, as well as in their offices, to the people, whose servants they are. We may therefore say of them, what every human being firmly believes, that they *compose by far the weakest, —the most silly,—the most ridiculous ministry that ever was inflicted upon the known gravity of the English nation.* Under *their* guidance, the vessel of *state corruption* is to be launched away among the surges of popular indignation at the ensuing general election.”\*

Or you may have seen and read such a passage as this :—“ It is a melancholy thing to see a man clothed in soft raiment, lodged in a public palace, endowed with a rich portion of the product of other men’s industry, *using all the influence of his splendid situation, however conscientiously, to deepen the ignorance, and inflame the fury* of his fellow-creatures. These are the miserable results of that policy which has been so frequently pursued for these fifty years past.—of placing men of *mean, or middling abilities, in high ecclesiastical stations.*”†

Or perhaps such observations as the following are not new to you :—“ There are two eminent Irishmen now in the House of Commons, Lord Castlereagh and Mr Canning, who will subscribe to the justness of every syllable we have said upon this subject, and who have it in their power, by making it the condition of their remaining in office, to liberate their native country, and raise it to its just rank among the nations of the earth. Yet the Court *buys them over, year after year*, by the pomp and perquisites of office ;—and year after year they come into the House of Commons, feeling deeply, and describing powerfully, the injuries of *five millions* of their countrymen, and continue members of a government that *inflicts* those evils, under the *piti-*

\* Edinburgh Review, vol. xx. p. 143.

† Ibid, vol. xxi. p. 93.

*ful* delusion that it is not a Cabinet question,—as if the scratchings and quarrellings of kings and queens could alone cement politicians together in indissoluble unity, while the fate and fortune of one-third of the empire might be complimented away from one minister to another, without the smallest breach in their Cabinet alliance. Politicians,—*at least honest politicians*,—should be very flexible and accommodating in little things—very rigid and inflexible in great things. And is this not a great thing? Who has painted it in finer and more commanding eloquence than Mr Canning? Who has taken a more sensible and statesman-like view of our miserable and cruel policy than Lord Castlereagh? You would think, to hear them, that the same planet could not contain them and the oppressors of their country; perhaps not the same solar system. Yet, for MONEY, CLARET, and PATRONAGE, they lend their countenance, assistance, and friendship to the MINISTERS, who are the stern and inflexible enemies to the emancipation of IRELAND.” \*

Or, suppose the character of a deceased illustrious statesman to be thus attacked:—“ Mr Frost had been a reformer too, and had even held a high office among the members of Mr Pitt’s Society. In this capacity he had constant communications with that distinguished personage; and at his trial could even produce the most cordial and respectable letters on the interests of their ‘ great and common cause.’ The canting visage of Harrison, or the steady virtue of Hutchison, were not more hateful to Cromwell,—Danton and Brissot were not more formidable to Robespierre,—Seyes is less odious to Buonaparte,—a Catholic petition to Lord Castlereagh,—or, to come nearer to the point, the question of the abolition to the same Mr Pitt himself, after his period had been turned on the slave traffic,—than such men as Frost, Hardy, Thelwall, and Holcroft were to that converted reformer of the Parliament. After he had once forsworn the errors of his way, and said to corruption ‘*thou art my brother*,’ and called power, or rather place, his god, (for he *truckled* too much for the sake of merely *keeping in*; he was too mean, in his *official propensities*, to deserve the name of *ambitious*), the sight of a reformer was a spectre to his eyes; he detested it as the wicked do the light,—as tyrants do the history of their own times, which haunts their repose, even after the conscience has ceased to sting their souls. We must be pardoned for using this language. We know of no epithet too harsh for him who was profligate enough to thirst for the blood of his former associates in reform,—of the very men whom his own eloquence, and the protection of his high

\* Edinburgh Review, vol. xxxiv. p. 337.

station, had *seduced into popular courses ; and, not content with deserting them, to use the power, into which he had mounted on their backs, for the purpose of their destruction.*"\*

This was said of a statesman who was dead ; but it was not upon that account the less libellous ; and it does not, upon that account, less serve my purpose of showing what, upon one side at least, is supposed to be within the proper limits of discussion and fair commentary. You will observe, too, that many of the passages to which I have directed your attention relate to living men, whose conduct and character are not less immaculate than that of the pursuer, but who have certainly been treated in terms infinitely more severe, infinitely more outrageous to the feelings, than any thing which has been said of him.

But it were endless for me to recite passages. If you are in the habit of reading such works as that from which I have now read, you must be in the daily habit of meeting with such passages. If the recollection of any of you is defective as to the source from whence these passages are taken, although there are some of them which I should think it scarcely possible to forget, or if you are ignorant of the work from which I have read,† and which furnishes an abundant supply of that species of writing, I doubt not my learned friend on the other side of the bar can easily inform you.

I repeat, that I do not wish to say any thing which would convey the idea of attempting to justify one libel by quoting another. But I do say, that if such license be allowed to the press upon one side of politics ; if such remarks are not considered libellous when used upon that side, they cannot be libellous when used on the other. A man is not a *public character*, merely because he is a *minister* or *servant* of the crown. I consider the noble pursuer of this action as *public a character as any man alive*. Is HE not a public character, who takes a lively and a *bustling interest*, and an *active share*, in the *political* business of the country ? Is HE not a public character, who is the agitator, the patron, and promoter, to the utmost of his ability, of the cause of *burgh reform* ? That is the character given of him by his own counsel.

And you will farther keep in mind this important distinction, that the passages of which the pursuer complains, occur in a common newspaper. Every one knows that publications of that kind are generally written in haste, without much opportunity of correction, and almost in the heat and bustle of actual political debate, and by persons for the most part not the

\* Edinburgh Review, vol. xvi. p. 120.

† The Edinburgh Review.



most capable of measuring accurately the import or power of the words they employ ; while, on the other hand, those productions, with which I have treated you with a specimen, are got up with deliberation and care, controlled and pruned with professional accuracy, every word is weighed, and the legal consequences of it studied and foreseen. You have, therefore, the strongest grounds for concluding, that the passages I have read to you are not beyond the limit of political discussion, although they are far beyond the limit within which my client has confined himself.

If then it is found by your verdict to-day, that the commentaries on the public character of this pursuer, which have been complained of, are libellous, there is an end to all that freedom of discussion on political matters, which tends to enlighten and ameliorate the condition of mankind ;—the press will be broken to pieces ; that press which it is your duty to encourage and protect within proper bounds, rather than to discourage and discountenance. I am sure it cannot be your wish to do such a permanent injury to society. Your verdict, this day, if against the defender, will be quoted as a precedent in after ages, probably in both ends of the island, as introducing a new law on the subject of libel ; but surely it cannot be your wish to inflict so permanent an injury on the country, as to make that law, which never was law before, viz. that the *public conduct* of PUBLIC MEN, is to be *placed beyond the check and controul of the public press*, and to be screened from comment or reprobation of any kind : such a verdict would introduce a rule which you yourselves may probably be the first to have cause to regret. It is the interest of all of us, and of all good men, to resist the introduction of so monstrous and dangerous a principle ; and it is strange, that the first attempt to introduce such an innovation, such an arbitrary principle, into the law, should come from those who are generally to be found, in *sound* at least, ranged against every thing which is thought to trench on the freedom of the press.

I have only to say farther, that it cannot be alleged that the person for whom I now address you, was actuated by any *malicious intention*. He was merely the printer and publisher of this work. The writer of the work which he published, has said nothing that is not in itself supported by fact. He has drawn inferences, which, I submit, are fair ; and although you should all be of opinion, that the inferences which he has deduced from the premises are not logically drawn, still, if you conceive that they are such as might have been drawn by a person differing in opinion with you upon a subject affording room for difference of opinion, you will not proscribe this work merely because the opinion of the writer differed from yours.

I shall not detain you longer with observations on this case. I am only surprised that it should have been your lot to be called on to decide it at all. I am convinced it was never the lot of any jury in the other end of the island to be called upon to say whether such passages as these were or were not libellous. It never was conceived, that persons writing regarding the political topics of the day were not entitled to draw the inferences they thought correct, expressing themselves in moderate and constitutional language.

I cannot quote precedents that rule such a case as this, because I have not been able to discover that any similar attempt has been before made to destroy the liberty of free discussion—least of all by those who generally represent themselves as the most anxious to encourage and protect such discussion. There is only one case to which I may shortly refer. It is the case of a prosecution for a *libel on the House of Commons*, written by a late reverend and learned gentleman in the vicinity of this place. The House of Commons, you know, is as much entitled to the protection of the law as any of its *individual members*; and it has the power to protect itself and its members; and it was in the power of Lord Archibald Hamilton to have proceeded in the House of Commons against my client, for a breach of privilege, if he had thought there was any thing libellous in these comments on his parliamentary conduct. It happened, during the celebrated trial and impeachment of Warren Hastings, that the gentleman, to whom I have alluded, composed a work in defence of the distinguished individual who was impeached,—and animadverted, in severe terms, on some of the proceedings adopted against him. On the motion of Mr Fox, the House of Commons directed a prosecution of Mr Stockdale, the bookseller, who published the work, and who was defended by the present Lord Erskine, on the plea, that the author was in the prosecution of a legitimate discussion; and although there might be hurried and intemperate expressions, yet, as the real object and meaning of the work was a *bona fide* defence of Mr Hastings, and *not a calumnious attack* upon the House of Commons, he was entitled to acquittal. *That defence was successful, and a verdict of acquittal was returned*, although many of the passages complained of there were infinitely stronger than those which you have been called upon to consider.

Here, too, is the case of a writer engaged in a political controversy, which occupied the attention, and interested the minds, of the people at the time. A writer struggling to resist the progress of what he conceived to be a dangerous political measure.

The grounds on which damages are called for against him have been stated to you. My defence is, that there was nothing improper in the commentary made on facts which have been stated and proved to you. His intention, obviously, was not to attack or insult the pursuer, otherwise than as it appeared necessary to attack him as the great leader and promoter of the measure which the writer was combating; and having no malicious purpose in his mind, but fairly commenting upon what he conceived to be the evil tendency of a political measure, and of the means by which that measure was supported, he is entitled to your protection.

What injury has the pursuer sustained,—what injury could he possibly sustain, from the publication of which he complains? We were told that he has not suffered any actual patrimonial loss which could be estimated in pounds, shillings, and pence. We heard of injured feelings, in the usual words of style. My brother, Mr Cockburn, loudly called upon you to award “great and substantial damages,” for what he has been pleased to describe as “an atrocious outrage on private feeling.” But it is difficult to suppose that the feelings of Lord Archibald Hamilton could be injured by any such attack on his political conduct. Those who embark in political life must be prepared for the storms which they are to encounter,—their feelings should be made of sterner stuff.

Has the pursuer put a single witness into the box to prove to you, that, upon reading the passages complained of, any one drew those injurious inferences which the pursuer has attempted to extort from them? Has he shewn that his character has suffered in the eyes of any one? That any one who knew him before, thought less of him after reading those passages? That he has lost the friendship of one, or failed to acquire the friendship of another, in consequence of having been thus attacked? He has shewn you none of those things. He has shewn nothing from which injury did arise, or could have arisen.

Then, what are you called upon to estimate? The consequences of an injury, which *was neither intended nor inflicted*. In short, the pursuer has come before you merely to say, “*I am LORD ARCHIBALD HAMILTON,—MY public conduct has been commented on, and, as no one is entitled to call MY conduct in question, I must have great and substantial damages!*”

You will not sanction such a principle as this. You will rather, by your verdict, seal the liberty of the press, than seal the warrant of its destruction.



**LORD CHIEF COMMISSIONER.**—Gentlemen of the Jury, Any prefatory remarks I have to offer, in now proceeding to address you, really must be, in some degree, an apology for detaining you almost at all at present; and therefore I shall merely take notice of an observation made by the counsel for the defender, which was, that you are not accustomed in this country as yet to the practice in such cases, and therefore it is necessary and incumbent on me, presiding here, to endeavour to explain to you the principles by which you should be guided in returning your verdict: and this I shall do, and continue to do, in all such cases, as well as I can, until the practice be better known. When I say this, I add, with great confidence, that you twelve gentlemen assembled there, are as likely to return a sound and satisfactory verdict as any gentlemen who ever sat as jurymen, and I am sure you will do so upon this occasion.

It is fit, in a question of this kind, which, although not the first question for slander or libel that has been tried in this Court, yet, from particular circumstances, is perhaps of greater magnitude and extent than any that has been yet tried—that I should state one or two general principles to you, and likewise to the gentlemen at the bar, *as to the law* of the case; because if I should be mistaken in any of them, or in the facts, it is competent to the counsel on either side, to correct those statements in point of fact now, and to move for a new trial, if I should go wrong in point of law.

I shall begin, then, by stating to you, that, in a *civil action*, the question of libel, or no libel, is a *question of law*. We have had occasion to consider that point before, in another part of our jurisdiction; and it has been so laid down, that it is incumbent on this Court to let the Jury know whether they consider the matter preferred to them, upon which the verdict is to proceed, as libellous or not; and it is for the Jury to consider the facts, and to apply the facts to the law.

To illustrate what I mean, I may observe, that it is stated in all the conclusions of the issues here, that they are, one and all of them, of and concerning Lord Archibald Hamilton. That is a question of *fact*, which it is for you to try, and to find according to the evidence, and as to which, as his name is quoted at full length, you can have no difficulty. But, in regard to the point of *law*, whether the matter stated as to Lord Archibald Hamilton is libellous or not, the Court is to form their opinion, and to state it to the Jury: if it be considered an erroneous opinion, the party aggrieved will have his redress; if that matter be stated by the Court in a way that either party thinks erroneous, they have their redress,

because it is a question of law, and it can be carried from this Court to the highest tribunal.

At the same time, it is incumbent on me to state to you, that, according to the law of this country, (which I should be very sorry to perplex or embarrass), the matter so runs into shades sometimes, that the nicest judgment may be unable to determine where the libel begins, and where the discussion may be free and allowable observation. Where that is the case, I have but two things to state to the Jury. The first is, that it should always be considered that they ought not rashly to come to a conclusion that that is *libellous*, which may be *doubtful*. And the other is, that if the words be *doubtful in expression*, and no particular meaning ascribed to them, and proved, it cannot but be a right and sound rule, that they ought, in such a case, to take the words *in the milder sense in which they can be construed*, and not in their more severe construction.

When I state this, I say farther, that the law under which we live here (as much as that of the other end of the island) IS A LAW OF LIBERTY; that, by the law of this country, I take it to be quite clear we have a *free press*. By that I mean, we are not under the necessity of applying to any licenser for publication. But, while we have a free press, we have also a restraint upon that free press, which every person is entitled to have administered, where he thinks himself aggrieved by its licentiousness.

In every question of this sort, it must be weighed most maturely, when the question is a matter of free discussion, such as the liberty of the press requires and permits, and when it comes to be a matter of personal attack or slander. By *personal* discussion, I do not mean discussion merely about the *personal character* of individuals. But there may be a discussion of the public conduct of individuals, containing matter of defamation, which amounts to personal injury, and gives a right of action for reparation and damages; for though free discussion is allowed of the public conduct of a public man, no one is allowed to attack him in his family and domestic retirement, or to attack his character in a moral point of view. It does not always follow, because the discussion arises respecting a public man, that, therefore, it can be carried on in such a way as to go beyond the bounds of truth and correctness, and to put things in publication for which there is no foundation. The general principles of free and fair discussion give no warrant for such proceedings.

For instance, there have been a great many men of eminence, now dead, who have held opinions in favour of parliamentary reform, and others, who have held opinions against

such reform. If Mr Wyndham, who was an opposer of parliamentary reform, had written to Mr Wyvil, who was in favour of that reform, that that which he had presumed to do was mischievous, and had stated that generally, and then gone on to reason on its mischievous tendency, it would have been for the reason and the understanding to judge between them. So, on the other hand, if Mr Wyvil had written to Mr Wyndham, that his adherence to the constitution, as represented at the Revolution, was mischievous, and gone on to state his reasons for saying so, there cannot be a doubt, that would have been fair discussion; and the appellation of "a friend to the constitution as it then stood," could not have been construed by any jury or court of law, to have been that sort of libel for which any damages should be awarded.

There are many cases of that sort—many cases of slander, in which the words used would be held slanderous at common law,—the slanderous nature of which is taken away by the circumstances in which it is uttered: in the case of the *character of a servant*, for example, where you are bound to give a character to the next employer of the servant; and in the case of the *credit* of your next neighbour, when it may be important to your friend to know the credit of another man. There is also *criticism on published works*. Very bold criticism is allowed on published works, when it does not descend to personal attack; (by which I do not mean an attack on the moral character of the author, but merely what deviates from a fair criticism of the work); that is not actionable. So the liberty of the press, and the free discussion of political subjects, the free discussion as to the conduct of public men, may go the length of making out a good defence. The question here is, Whether that defence is sufficiently established in the case under consideration.

And, therefore, the question you have to try, is, are the passages before you matter of free discussion, or an *individual attack*,—I do not mean on his private character or morals, but on the person of the pursuer, Lord Archibald Hamilton?

Before I state what has occurred to me on the particular circumstances of the case, I should wish to support my doctrine upon general authority.

There was a question with which I was well acquainted at the bar in England,—an action and prosecution against Mr Cobbet, for the publication of libels against certain persons in Ireland. Some of those were ministers of the Crown, others were in a private capacity. They were all included in the same libel. The law I take to be clear; whether a person is a public functionary, in the character of member of Parliament, discharging his duty in the Legislature only; or whe-



ther in a double capacity, discharging it as a member of the Legislature, and also as a servant or minister of the Crown. The rule must be the same as to both. And therefore it applied equally, in the case to which I have referred, to those who were in the highest stations of public trust, and those who either were not so, or had ceased to be so.

It was contended in that case, that unlimited free discussion of public men, on public subjects, was that which is warranted. But Lord Ellenborough said, and no Judge had more correct views of what was due to the freedom of the press, "It is no new doctrine, that if a publication be calculated to alienate the affections of the people by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime; it has ever been considered as a crime, whether wrapt in one form or another. The case of the King *v.* Tutchin has removed all ambiguity from the question; and although at the period when that case was decided, great political contentions existed, the matter was not again brought before the Judges of the Court upon any application for a new trial."

In a subsequent part of the same charge his Lordship added, "It has been observed, that it is the right of the British subject to exhibit the folly or imbecility of the members of the Government; but, gentlemen, we must confine ourselves within limits. If in so doing individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation.

"In all these cases it may be laid down as a general rule, that though the discussion of political measures is innocent in the abstract, that discussion must not be made a cloak for an attack upon private character, which is of itself a substantive injury, independent of its political connexion."

This I take to be the exact question to be tried, and it is so in every case of this sort; and the question always is, where has the one ended, and the other begun?

There are one or two other *dicta*, which are so much the *dicta* of sound wisdom, that I cannot help referring to them also in the very terms before me. They were pronounced by two of the ablest Judges that ever sat in Westminster Hall: and although I allude to Westminster Hall, I do not found upon them as precedents; and I hope I am not doing any thing wrong, but what the Court will sanction, as well as the Bar.

Lord Mansfield and Lord Chief Justice *De Grey*, in the remarkable prosecution of Mr Horne Tooke, delivered this opinion, and it is a doctrine that ought to be imprinted on the

minds of Juries in every case of this kind. "It is the duty of the Jury to construe plain words and clear allusions to matters of universal notoriety, according to their obvious meaning, and as every body else who reads must understand them."\*

Therefore you have nothing to do in the consideration of this, or any other case, than to put yourselves in the situation of a common reader, where there is nothing doubtful in the matter, and you have to draw conclusions which any common reader would draw.

This certainly seems to militate, in some degree, against the doctrine, that the question of libel, or no libel, is a question of law; but it is solved in this way, that it is the duty of the Court to state the law of the case to the Jury, and what they conceive to be libel, as applicable to the record; it is for the Jury to draw a fair conclusion from the evidence, and to give a verdict according to law. If they give it against the law, it is no legal verdict, and will be set aside. If the Court go wrong in point of law, I have mentioned that parties have a remedy by bill of exceptions.

Having stated these things to you, I shall make a very few observations on the case now before us.

The commentaries that have been made by the counsel of the defender, have been made with ability, good sense, and moderation, and the defender is entitled to all the benefit that can arise from them. They have chiefly rested on a comparison of the terms of the libel with the conclusions contained in the issues; four passages are given from the 16th, 18th, and 19th and 22d Numbers of the Beacon; and from each of these passages, certain conclusions are drawn, which are to be found in the issues you are now to try.

I fairly admit, or rather think myself bound to state, that, in the settlement of those issues, which go through a sort of purgation in the Jury Court, which is essential to this institution in its early stage, the *manner* in which the issues are put, necessarily depends upon the officers of this Court, but they have no right to controul the parties. If the issues had been submitted to a special pleader in England, the probability is, there would have been a variety of meanings ascribed to certain doubtful words, and it would have been for the Jury to find by their verdict, which was the true one. But here those meanings are not ascribed, and the conclusions spread over considerable ground, perhaps more than was necessary for maintaining the action.

\* Holt on Libels, p. 230. Lond. 1812.

I therefore lay down this rule,—If it appears, that the matters which have been published in this newspaper are, in part or in whole, of the nature of a libel; if there are conclusions drawn which support the libel, that is quite sufficient for you to find a verdict for the pursuer, and your minds must not be led astray by the circumstance of there being other conclusions drawn, which may not suit the nature of the libel. That is an important observation, and I shall proceed to illustrate it by going through the case itself.

It is stated, here are three different grounds upon which Lord Archibald Hamilton is entitled to recover damages. First, his correspondence, and the effects of it, and all that is said respecting it,—with Walker. Next, his correspondence,—and all that is said respecting it,—with James Wilson. Lastly, his communication,—and what passed at that communication,—and what was done in consequence of it,—with Turner. Those are the three leading heads. There is another, as to a passage in the 22d Number of the newspaper, which is of less importance, and which is the last conclusion of the action.

To take those into consideration, let us see what the nature of these conclusions are. On the first head, the conclusion is in these words:—“Whether the whole or any part of the aforesaid words are of and concerning the pursuer.” Of that I have already stated, there cannot be a doubt. His name was published at full length,—there is no *inuendo*, as it is called in England, necessary. It is then said, that the matter published is “meant and intended to hold up, and does hold up, the character and conduct of the pursuer to discredit and contempt, and is meant and intended to bring, and do bring, his loyalty and attachment to his Majesty, and to the Constitution, into doubt and question, by falsely and injuriously accusing and representing the pursuer as being guilty of presumption, or of purposely creating groundless discontent among the lower orders, or of being a worker of public mischief, or being an enemy to the happiness of the lower orders, or of trying to place the lower orders at variance with their rulers, or leading certain persons into mischievous and extravagant folly,—to the loss and damage of the said pursuer.”

If you turn back to that part of the newspaper, NO. 16. which gives rise to that conclusion, I cannot help stating to you, that it appears to me that a great part of it is public discussion. I consider that part of the paragraph where burgh reform is stated to be a sort of mischief, to be public discussion; and other parts of it are also public discussion.



But then I cannot disregard the evidence that has been given. The evidence before you with regard to this correspondence with Walker, is evidence which establishes, that Lord Archibald Hamilton was addressed in writing, (although the original letter has not been produced), by Walker of Crail, (whether in the character of chairman of the burgh committee, or not, is of no importance), requesting to have the set of the burgh. You have Lord Archibald Hamilton's answer, and it is written in the character of chairman of the committee. It is an extremely short letter. It confines the matter to the subject of the request. And then there is a reply to that letter, which has also been given in evidence. And here the correspondence ends.

It was competent to the other party to have said, All that is stated in this part of the newspaper, is true, and we pledge ourselves to prove it; and if they had offered a proof, with mention of time, place, and circumstances, they were entitled to issues which would have made them what the law calls *actors* in this cause; and if they had made out their case, they would have been entitled to a verdict of justification; but they would not be entitled to prove more than they had stated; and then in a civil action, the proof of the fact takes away the libellous nature of the commentary made upon it.

But having stated all that is here, and made reference to the libel, I shall now only call your attention to one particular part of it. Of course, Lord Archibald makes an answer to the letter of Mr Walker, applying to him for a copy of the set of the burgh of Crail. According to the evidence, he writes, in answer to that one letter, as follows:—

*House of Commons, March 20.*

SIR—I am quite *surprised* you should be ignorant of the *set of your own burgh*, and apply to me for a copy of it. I have desired our clerk, however, to send you a copy of it, as *officially returned* to the burgh committee; and, when you receive it, I desire you will let me know how far the *practice* of the burgh differs (*if at all*) from the set.—I remain, &c.

A. HAMILTON.

Mr David Walker, *Crail*, N.B.

Now this newspaper states, “Of course Lord Archibald's answers to the letters which were sent him from this respectable quarter, are generally *quite in the common cant which is used on such occasions*. They contain a great deal about ‘*indefeasible privileges*,’ ‘*imprescriptible rights*,’ and ‘*the revolution of 1688*,’ and ‘*the enlightened burgesses of Crail*,’

and generally very little else that any one here can understand." Now, Gentlemen, there is not the least shadow of evidence to establish that Lord Archibald did write at all in the way he is represented to have done. He only wrote *that one letter*, respecting *the set of the burgh*. There is not the least reason to suspect any thing more. And therefore that passage, instead of being a fair discussion or comment on the public conduct of a public man, is *an invention of the writer of this paper altogether*. According as the fact stands before us, he is represented by the writer of this paper, as a *common correspondent* of this individual,—let him be respectable or the reverse,—and as *corresponding with him* about "*indefeasible privileges*," "*imprescriptible rights*," and "*the revolution 1688*."

Now, I conceive this is not an attack on Lord Archibald Hamilton's private character, or moral conduct in private life. But it is a *fact* that was *brought forward* to the notice of the public, and *established*, so far as the influence of this paper could establish it, to those who had access to read it; and you are to apply to this Lord Ellenborough's doctrine, and say, whether Lord Archibald Hamilton did, or did not become, by this statement, the *common correspondent* of Walker; and whether his correspondence has, or has not been *misrepresented*, and stated in a *different way* from that correspondence which is actually in evidence. Then let us *apply that doctrine* to the facts in evidence, and it will illustrate the whole.

Lord Archibald Hamilton says, it "holds up his character and conduct to discredit and contempt; and was meant to bring, and does bring, his loyalty and attachment to the ministry and to the constitution into doubt and question." With regard to the first part of this statement, it is for you to consider whether such a conduct would not bring discredit and contempt on the pursuer. I cannot tell you that there is any thing in this—(and I have read the paper over and over again)—which establishes that it has brought his loyalty and attachment into doubt and question. But I state to you, in point of law, that part of the passage I have read, which is not established by evidence to have any truth, but the reverse of it, does establish libellous matter against Lord Archibald Hamilton, which may be said to bring his conduct into discredit and contempt; for I must say, that a person of high rank going about and taking opportunities of corresponding with persons of low rank, such as David Walker, upon such subjects as "*imprescriptible rights*," "*indefeasible privileges*," and "*the revolution of 1688*," cannot, in common sense, and according to the common notions of propriety, at this time,

in this country, be considered otherwise than exposed to merited discredit and contempt.

At the same time, when I say this, I may add, that if this had stood as the only part of the libel, I might have thought it might as well have been passed over.

I come now to the next issue, the conclusions of which are,—“ And whether the whole or any part of the aforesaid words are of and concerning the pursuer, and are meant and intended to hold up, and do hold up, the character of the pursuer to discredit and contempt, and were meant and intended to bring, and do bring, his loyalty and attachment to his Majesty and to the constitution into doubt and question, by falsely and injuriously accusing the pursuer of corresponding, for improper and unconstitutional purposes, with people of low character, on political subjects; or of opposing bills in Parliament, merely in order to acquire popularity; or of being willing to open a correspondence with any person who can be prevailed upon to enter into his political measures; or of being regardless of his high birth; or of corresponding with people of a suspicious cast on political subjects; or of having procured, from a person of the name of Turner, a petition, complaining of the arbitrary conduct of the Lord Advocate; or of having induced the said Turner to apply to Parliament; or of being the noble correspondent of Craik radicals and Strathaven traitors; or having called in question the conduct of the Lord Advocate, although the conduct of that public officer had never been called in question, except by the patrons or associates of crimes,—to the injury and damage of the pursuer.”

Now, you will observe, that the prefatory part of this conclusion is the same with the former; but then it goes on to farther matter. And you will recollect, that in the early part of this publication, (in the 18th Number of this newspaper), Lord Archibald Hamilton is again described, pretty generally, as the correspondent of people of low character.

Here again we have evidence, that Lord Archibald Hamilton only wrote two letters to this Wilson.—He wrote one letter to him in 1805, and another in 1815; and this, according to the unrepelled testimony before you, is all the correspondence he ever had with that person.

Now it is impossible for me to view the statement of the defender on this subject, otherwise than as *false, injurious, and malicious*. It is a different question what damages you are to award to the pursuer. I shall come to this by and by. There is *no doubt* in the early part of this passage, but the latter part is still more unequivocal; and there it does not appear to me, that there are any of those doubtful words, which in one



part of it might have required explanation. For example :—  
 “ He ought to know that the conduct of the Lord Advocate at the period alluded to, was such as has insured the lasting gratitude of the country, and that it has never been called in question, except by the patrons or associates of crimes, which could not have been speedily subdued, except by the most remarkable union of firmness and lenity.” I think it might have been certainly more conclusive, but still I think the meaning of this passage to be clear, by referring to another part of the publication, at page eighth of the issues, where it is said, “ But we could not have supposed the noble Lord capable of going this length, or of so far degrading himself, as to become *the patron also of suspected patriots.*” The expressions here used, “ The patrons or associates of crimes,” and “ the patron of suspected patriots,” if they had stood by themselves, in one number of this publication, might possibly have been considered of doubtful import ; but you will recollect this action is brought upon the whole of the Numbers of the Beacon newspaper, against the same defender, who was the publisher of the newspaper, and was going on in a train of observations, professedly to discuss Lord Archibald Hamilton’s conduct, and who, if he had done it fairly, according to the facts known by him, or which he had evidence of being so, relating to Lord Archibald Hamilton as a public man, would not have been amenable to any Court for any thing he did. But when the discussion goes on this way, from day to day, it is perfectly right, if an obscure sentence occurs in one passage, to see how it is explained in other passages of the same paper. If I am wrong in doing this, it is merely in a question of construction, which you yourselves can easily determine.

Then, putting those two things together, what, in common sense, would any man conclude but that Lord Archibald Hamilton is here charged with having called in question the conduct of the Lord Advocate, as arbitrary and unjust, and which had never been called in question but by the patrons and associates of crimes, or the patrons of suspected patriots? If that is not the meaning of the paragraph, I wish it had been more distinctly stated, as in that case it would have been more satisfactory to my mind.

As to the petition presented by Turner, it is stated in page 7th, “ We observe from the report of the proceedings on Wednesday, that Lord Archibald Hamilton, in the dearth of subjects of political interest, has procured (from a person of the name of Turner), a petition complaining of the arbitrary conduct of the Lord Advocate. It seems that this man was apprehended and imprisoned for a week, as a suspected person last year, during the disturbances in the west country,

and he now applies for compensation, on account of the injury which his character has sustained. The means by which he has been induced to do this are, no doubt, *quite worthy of the noble correspondent of the Crail radicals and Strathaven traitors.*"

Certainly these words do not require any meaning to be put upon them. You can draw but one conclusion from them, which is the conclusion drawn by the Court, *that they are libellous.*

You will next consider the charge made in the conclusion of this issue, namely, whether he is here accused of "*corresponding* with people of a suspicious cast on political subjects, or of having *procured* from a person of the name of Turner a petition, complaining of the arbitrary conduct of the Lord Advocate, or of having *induced* the said Turner to apply to Parliament, or of being the noble correspondent of Crail radicals and Strathaven traitors, or of having called in question the conduct of the Lord Advocate, although the conduct of that public officer had never been called in question, except by the patrons and associates of crimes,—to the injury and damage of the pursuer."

Then comes another publication in No. 19. of the Beacon newspaper, which publication is referable to the same matter with that which I have just read to you. It is stated in that publication, "We have not for a long time observed any thing more malicious and stupid, than the petition presented by Lord Archibald Hamilton to the House of Commons in name of James Turner, who was confined for a few days during last spring upon a charge of high treason. Every one knows how these petitions are got up; we shall not therefore insult our readers by an attempt to prove what all of them must know well enough, that *this is in truth the complaint of Lord Archibald Hamilton himself.* This noble person is already well known as *one of the drudges of the Whig faction*, as the *patron of burgh reform*, and *in that character* the honoured *correspondent* of David Walker of the royal burgh of Crail, of whose power of spelling and composition we lately gave a striking example. But we could not have supposed the noble Lord capable of going this length, or of *so far degrading himself* as to become *the patron also of suspected patriots.*"

Here it is stated that this petition, which appears, on the face of the publication itself, to have been a petition to Parliament in name of James Turner, and by him sent to Parliament,—was not the petition of the said Turner, but the petition of Lord Archibald Hamilton himself. There again the words require nothing but to be taken in their plain meaning. It was stated, and it is a fair argument on the part

of the defender's counsel, that this *procurement* does not mean *procured* in any bad sense, but *acquired*; as it appears by the evidence, that Turner and his brother-in-law had an interview with Lord Archibald Hamilton, that the petition was prepared and sent up after that *communing* with Lord Archibald Hamilton, and that his Lordship presented the petition. You heard all these circumstances detailed in evidence.

This is a part of the case which relates more particularly to Lord Archibald Hamilton's situation, and to his duty, as a member of Parliament. There is not a more evident or important duty for a member of Parliament to perform, whether he agrees in opinion with the terms of the petition he is requested to present or not, than that of presenting petitions to Parliament; and the only rule that ought to militate against that is, that the petitions must have nothing in them irreverent or disrespectful to the House,—to the Legislature,—or to religion,—or law of the country,—nor any thing indecent or immoral.

It is not alleged that this was a petition of that description. It only prayed for some relief on account of what the petitioner considered unfair imprisonment and great hardship.

It was said this petition was got up in a way every body must understand; and the construction drawn from this assertion is, that this was a party measure in order to excite discussion. But remember this, that Lord Archibald Hamilton is a member of Parliament, and that he commits a great transgression and a breach of his public duty as a member of Parliament, if he presents a petition to the House which is not the petition of the person whose name it bears. He, by such conduct, imposes upon the man, upon the House, and upon the country at large.

Now I cannot put any other construction upon this than that which I have done. It is an offence which might have been visited by a complaint to the House of Commons for a breach of privilege; but it is equally competent to bring an action at common law;—and here is such an action.

This is the case before you; and I think it is sufficiently made out to entitle the pursuer to a verdict.

There then comes the last issue of all, about which I need not detain you; for if those I have already noticed are not libels, the last is not one. I leave this case, therefore, to your own consideration.

Upon those grounds the conclusion I come to is, and I speak also the opinion of the learned Judges who are sitting along with me, that this case, especially on the two points of Wilson and Turner, does present to the eye and the understanding, what, in law, and in common sense, amounts to a



*libel*; and differs entirely from that fair and free discussion, through the medium of the public press, which is and must be allowed in this free country.

Having stated this opinion of the Court, I hope not with more minuteness than was proper, I have a word or two only to say on the subject of damages. It is for the party, the pursuer himself, to judge, how far he will insist for damages; and, when a case comes before a court of law, it is for the court to deal with it according to justice, and without prejudice.

I have endeavoured to state to you the views of the Court on the law of the case. It is your sole and exclusive duty to assess the damages. It is very true, that here *no damages has been proved*. It is very true, that Lord Archibald has suffered nothing in the estimation of the public by these libels. He may have suffered in his mind; he doubtless has, and must have so suffered. But, I cannot suppose that a person of the high character which belongs to Lord Archibald Hamilton, could bring this action with any view whatever, but one,—that of vindicating his character from the aspersions cast upon it, and disproving the truth of the statements made in this newspaper. If it be established, by your verdict, that those statements were unfounded, it does appear to me his object is attained; and, though it is not the duty of the Court to interfere, because it is exclusively your duty to fix the sum of damages to be awarded, yet I think it is my duty to say, and I know the Court concurs with me in opinion, that vindictive or exemplary damages are not fit expressions, or to be counted upon in fixing the damages to be awarded. Whatever injury the pursuer has suffered, will be repaid to him by your verdict, finding in his favour; and, with regard to the damages, they must be to him a matter of far inferior consideration.

As to the amount of damages to be given, that is a subject about which you may differ;—the individuals of every body of men necessarily differ on the amount of damage, or fine, on the first contemplation of the subject.—But, as your verdict must be unanimous upon this point, that unanimity will be brought about by good sense, directing that rational and sound compromise of opinion, which every body of men must employ, uniting on good sound principles and sound sense.

Under those circumstances, I shall not go over again any part of what I have stated. If you think yourselves warranted in finding, that a libel in this case has been proved, you will find a verdict for the pursuer, and give such damages as you may think fit; but I do trust they will not be excessive or immoderate in the amount.

The Jury retired for about half-an-hour, and, on their return, gave in their verdict, by the mouth of Sir Robert Keith Dick, their Chancellor, unanimously finding for the pursuer on all the Issues—Damages, One Shilling.

*Counsel for the Pursuer*,—Mr FRANCIS JEFFREY, and Mr HENRY COCKBURN. YOUNGS, AYTOUN, and RUTHERFORD, W. S. *Agents*.

*Counsel for the Defender*,—Mr JOHN SHANK MORE, Mr DUNCAN M'NEILL, and Mr WILLIAM MENZIES. ROBERT SYM WILSON, W. S. *Agent*.

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# PROCEEDINGS

AGAINST

WM. MURRAY BORTHWICK,

AT THE INSTANCE OF

*HIS MAJESTY'S ADVOCATE,*

AND OF

ROBERT ALEXANDER,

STYLING HIMSELF EDITOR AND PROPRIETOR OF THE  
GLASGOW SENTINEL NEWSPAPER.

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WITH AN APPENDIX OF DOCUMENTS,

AND

A PREFACE,

*BY WILLIAM MURRAY BORTHWICK.*

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EDINBURGH:

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## PREFACE

BY

W. M. BORTHWICK.

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IN spring 1820, when the west of Scotland was in a very perturbed state, it occurred to me that a weekly newspaper in the county of Lanark, conducted upon loyal and constitutional principles, might have considerable effect in doing away the foolish notions then prevalent among the lower classes. My political principles were those of a Tory, inclined to support the present ministry; and I still remain of the same sentiments. I also thought this undertaking might prove beneficial to myself. At that time I was under considerable embarrassments. I had failed in a printing concern carried on by me at Lanark, and had made a composition with my creditors. A subscription I thought might be raised for setting such a newspaper afloat. I suggested the scheme to several gentlemen in the county of Lanark, and finding they approved, a subscription was set on foot, and the sum of L.275 was subscribed, in shares of L.25 each, by different noblemen and gentlemen of the county.\* It was resolved that the paper should be published at Hamilton, as the most central situation; and on the 28th of April I published the first number of a weekly paper, entitled the *Clydesdale Journal*, and bearing to be printed by “W. M. Borthwick and Co.”

William Aiton, the Sheriff-substitute at Hamilton, prepared the prospectus, and was recommended to me by some of the subscribers as a fit person to assist me in writing

\* See Subscription Paper, Appendix, A.

articles for the Journal; and accordingly, from the commencement of the paper till the month of June, the principal articles were of his writing. But I found, that in place of reclaiming and conciliating, Mr Aiton's political principles and style of writing were only calculated to irritate and inflame the public mind; and having endeavoured in vain to soften down many of his articles, and to clear them of personal abuse, at the recommendation of several of the subscribers, and at the urgent solicitation of George Douglas Aiton, and his brother-in-law the Reverend William Patrick, I resolved to procure another editor.

With that view I advertised in the Glasgow Chronicle for a partner capable of editing a respectable periodical Journal, and of advancing the sum of L.300. Among others Robert Alexander, then residing in the Gorbals of Glasgow, offered his services. He said his political principles were moderate, that he was a firm supporter of the ministry, and highly disapproved of all personal abuse. He engaged to advance the sum of L.300, and in consequence I entered into an agreement with him as a partner in the newspaper, which then commenced under the firm of "Borthwick and Alexander." But although he pretended that he could easily command the requisite sum, yet week after week passed away without his advancing one farthing. I incautiously became security for the rent of a house he had taken in the town of Hamilton, far beyond his station and means, and for other furnishings to him. After being put off for months, amidst protestations of loyalty and principle, I concluded that his professions were insincere; and in this I was confirmed from his own confession to several people, that he was writing in the Journal quite contrary to his true sentiments, and declaring that he could readily have advanced the sum required, if it had not been that the principles of the Journal were not satisfactory to him.

At length, after having burdened me with his house rent, tavern bills, victuals, and borrowed money, he absented himself altogether from Hamilton, and returned to Glasgow, where his furniture was sold by those very kind friends whom he had pretended to me were to have been his supporters. In consequence of this desertion the imprint of the paper was again changed, and was published under the original firm of "W. M. Borthwick and Company;" but no dissolution of the former contract took place.



Being thus situated with Alexander, George Douglas Aiton, the son of the Sheriff-substitute, now came forward and volunteered his services in writing for the newspaper, which was at a very low ebb, the whole funds which had been subscribed being exhausted, and I was obliged to have recourse to a second subscription. To procure this, a certificate or manifesto, in favour of the paper, was signed by a number of its supporters.\* I accepted of G. D. Aiton's offer, and having furnished him with recommendatory letters, he went through among the friends of the paper, and procured additional subscriptions to the amount of L.235.† For some time his moderate style of writing gave me great satisfaction; but, for reasons best known to himself, he made private applications to several of my friends, wishing to have the paper and whole funds placed under his absolute disposal—and so far he succeeded. He procured a Minute of the Committee of Subscribers,‡ desiring me to give up the charge of the paper to him, which I refused to do, when a quarrel ensued, and I quitted all further concern with him.

Having now no other person to edit the paper, I had again recourse to Alexander. I found him without a home, wandering about the country, his wife living with her father at Ayr, and himself in such desperate circumstances, that taking the advantage of the spirit of party which was then running very high in the west country, he had applied to the whig interest in Renfrewshire, to establish and edit a whig newspaper for them in Paisley, and had actually published a prospectus of it,§ and engaged a printer. About this time, he represented that he had all along been a whig, except for the few weeks when he was at Hamilton; that as whig principles were congenial to him, he could perform wonders in the way of writing, if he could get himself established as a whig writer—and he represented all the tories as a niggardly set of men, only intent upon their own aggrandizement. But his whig friends did not come forward, and the plan was relinquished. He then changed his mind, and represented the whigs as good for nothing but looking after places for themselves; and in this humour he contrived to procure an interview with me, and proposed that I should substitute him in the stead of G. D. Aiton, as

\* See Appendix B.

† See Letter and Subscription Paper, Appendix C.

‡ See Minute of Committee, Appendix D.

§ See Prospectus, Appendix E.

he had now done with the whigs for ever. I had occasion to go to London at this time, and had no other alternative; so I was under the necessity of engaging him at a salary of a guinea per week, to superintend the paper during my absence, and promising him a share of the business on my return. I did not return from London till the beginning of September; and during this period, the paper abounded with personal scurrility and various libellous articles, for one of which an action of damages had actually been instituted against the proprietors, and others were daily threatened. To add to these misfortunes, he had collected the outstanding debts of the newspaper during my absence, to the amount of upwards of L.100, and yet had allowed my furniture to be sold for payment of a small debt due by the concern, and the printing materials in the office to be brought to the hammer, by James Robertson and James Ritchie, booksellers in Edinburgh, who had been appointed trustees for my former creditors.

Only one number of the Clydesdale Journal was published after my return. In my absence, the office had been made the repository of many of the libels sent from Clydesdale to the Beacon newspaper in Edinburgh, and the discontinuance of that paper gave Alexander the hope that the establishment of a similar paper in Glasgow would prove successful. The next number, therefore, was published at Glasgow under the title of "The Glasgow Sentinel, formerly the Clydesdale Journal," under the firm of Alexander and Borthwick, which firm was adopted to distinguish it from that of Borthwick and Alexander, under which the Clydesdale Journal had been published. The very first number of the Glasgow Sentinel contained so gross a libel upon James Stuart, Esq. younger of Dunearn, that he immediately brought an action of damages against Alexander and me as the printers and publishers; and from that moment I determined to quit the concern as fast as possible. Alexander represented to me that he had succeeded in establishing a new Company under the firm of Robert Alexander and Company, and even mentioned the names of several persons as partners; and in consequence I was prevailed on to conclude a bargain with him on the 14th November, under the firm of Robert Alexander and Company, whereby I engaged to relinquish my whole interest in the concern upon receiving L.20 in cash and L.90 in bills, with good security, which were to be delivered to me before the 8th

of December; but after waiting all that time for the fulfilment of the agreement, I could not procure the bills with security, nor any count and reckoning for the money which Alexander had collected for the Clydesdale Journal during my absence.

It is proper to mention, that after having resolved to quit the Sentinel, I entertained thoughts of establishing a newspaper in Edinburgh, and gentlemen of respectability there held a correspondence with me on that subject. I also received letters from London, urging me to set on foot another paper in Edinburgh, in place of the Beacon, but for reasons unnecessary now to be mentioned, the design was abandoned.

Alexander having failed to fulfil his part of the agreement, I was obliged to have recourse to legal measures, and raised two actions before the Magistrates of Glasgow, the one concluding that Alexander should be ordained by the Magistrates to fulfil his agreement with me, either by delivering to me the stipulated bills, or that I should be reinstated in my property; and the other for count and reckoning for Alexander's intromissions with the funds of the Clydesdale Journal. In the first action, the Magistrates pronounced an interlocutor, certifying Alexander, that if he did not grant the bills within the time therein limited, they would restore me to the possession; and Alexander having failed to deliver the bills, the Magistrates pronounced a judgment restoring me to possession, which judgment was allowed to become final, and on the 1st of March, I re-entered to the possession of the Sentinel-office, and continued in it the whole of that day.\* Here I found the various libels for which prosecutions had been raised, or were threatened, lying open, in the hand-writing of the original authors, and conceiving them to be of the greatest importance to myself for my relief against the authors, I determined on taking possession of them. I did not apprehend, however, that I would again be removed from the office, and so I took possession of only two MSS during that day. In the evening, I locked the office and delivered the key to one of the workmen, telling him I would be back next morning, carrying with me only the keys of my own desk and of the safe in which the books were locked up; but during the night I was apprehended by a messenger at arms, on a caption

\* See petition to the Magistrates of Glasgow, and interlocutor following thereupon—App. F.



against me, which had been issued some months before, proceeding on a bond which I had granted to Messrs Robertson and Ritchie for behoof of my creditors. I represented to the messenger, that the contents of that bond had been entirely extinguished by the sales that had been made of my effects, and by different payments which the trustees had got, yet the messenger hurried me to Glasgow Jail, and there I was entered upon the books of the jail as incarcerated for payment of a balance of L.50 due on the bond. I immediately sent for Mr William Henderson, my agent at Hamilton, who had long been acquainted with all my affairs, and learning that the caption at the instance of Messrs Robertson and Ritchie had been put in execution at the instigation of Alexander, who had gone from Glasgow to Hamilton for the purpose of procuring it, Mr Henderson undertook to go to Edinburgh, and to procure my liberation on a bill of suspension from the Court of Session. Mr Henderson remained there for several days. A bill of suspension and liberation was actually written out, but Mr Henderson having found that the sum of L.50 for which I had been incarcerated, must previously be consigned in Court, it occurred to him, that he might save the expense of a suspension altogether by consigning the money in the hands of the Magistrates of Glasgow; and having therefore given up the bill of suspension altogether, he proceeded to Glasgow on the 9th of March, accompanied by Mr William Spalding, writer in Edinburgh, whom he had employed as my agent there; and upon Mr Henderson's arrival at Glasgow, he consigned L.50 of his own money in the hands of the jailor, and obtained my liberation. This was done by Mr Henderson, on the faith of repetition from the incarcerators, and I granted him an assignation to my right of repetition.

On the morning of the 11th of March, at the usual hour of beginning business, I proceeded to the Sentinel-office to resume possession of my property, taking with me the keys of my desk, and of the safe, and two persons as witnesses of my resuming possession, one of whom held a mandate from me to retain the possession in case of my absence; and in presence of these witnesses, and of a boy who was in the office, I was proceeding to open my own desk and the safe, when I discovered that the locks of both of them had been forced open, and changed during my incarceration, and that new locks had been put on; but finding in an open desk a new key which opened the safe, I took out from it

sundry letters which I found therein, and sent them along with a great number of manuscripts which were lying open and loose in the office, to my law-agents, Messrs Henderson and Spalding, at the Tontine Hotel, for their examination. They selected such as appeared most material for my defence, and I was about to return with the remainder to the office, when the person whom I had left there came to the Tontine, and mentioned that it would be needless to go back, as Alexander's brother, and James Todd, writer in Glasgow, Alexander's agent, had made their appearance, and after forcibly turning him out of the office, had locked the door, and carried off the key. I therefore deposited the mass of manuscripts in the hands of Mr Alexander Ure, my agent in Glasgow, for safe custody. In the course of this examination, it was discovered, for the first time, by me and the gentlemen present, to our great surprise and regret, that a gentleman of rank and fortune, now no more, whose name had never before been hinted at, was one of the principal contributors to the various personal attacks that had appeared in the Sentinel.

Next day I was apprehended, upon an application from Alexander, and brought before the Magistrates of Glasgow, before whom I emitted a declaration relative to my carrying off the MSS from the Sentinel-office, and was dismissed. From Glasgow I went to Edinburgh, where I remained for several days, and from thence went to Dundee, where I had business of importance to transact, and was living openly. On the 3d of April I was seized by a messenger at arms, accompanied by Mr James Todd, the agent of Alexander, and conveyed in irons between them to Edinburgh jail; where, at first, I was refused all communication with my agents, and am now informed that I am to be brought to trial at the instance of the Public Prosecutor, accused of abstracting papers from the Glasgow Sentinel-office; and of which trial I shall hereafter endeavour to procure a fair account, and lay it before the public.

W. M. BORTHWICK.

EDINBURGH JAIL,  
8th April 1822.





## PROCEEDINGS PREVIOUS TO TRIAL.

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W. M. BORTHWICK having been prevented, as detailed in the Preface, from resuming the possession of the Sentinel-office, presented a petition (March 11. 1822.) to the Magistrates of Glasgow, setting forth the proceedings that had taken place with regard to the property in the Sentinel-office, and the interruption that he had experienced in retaking possession in terms of the Magistrates' warrant; and praying that Alexander and his concurrents might be bound over to keep the peace towards the petitioner, and to give him peaceable possession of his property; and, in the mean time, to inventory and value the effects, books, and others in the premises; to grant warrant for selling the same, and dividing the proceeds among the parties according to their several rights; and to interdict the said Robert Alexander, and all others, from interfering with the said effects, and from proceeding with the publication of the Sentinel newspaper, until the future orders of Court.

This proceeding on the part of Borthwick was followed by a counter-proceeding on the part of Alexander, with concurrence of the Procurator-Fiscal of Court, setting forth, that the desks of Robert Alexander, in the Sentinel-office, had been broken open, and various private papers of the said Robert Alexander had been carried off; and praying, that William Murray Borthwick, and Felix Dougharty, and Loudon Robertson, who were stated to have assisted him, might be apprehended, and brought before the Magistrates for examination, and thereafter committed to prison, till liberated in due course of law; and that warrant should be granted for searching for the property so carried off, and for bringing the same, if found, into Court.

Warrant was accordingly granted as craved. Borthwick was apprehended, and brought before the Magistrates of Glasgow, where he emitted a declaration, which is to be found in the appendix.\*

A minute was then lodged on the part of Alexander, stating, that as it appeared from Borthwick's declaration, that the papers, books, and keys, mentioned in the petition, were now in the hands of his agent, Mr Alexander Ure, a warrant should be granted for searching for them; on which the Magistrates pronounced judgment, ordaining Mr Ure to lodge the same in the hands of the Clerk of Court, to be sealed up, and kept by the Clerk till disposed of by the Court.

Against this judgment, a reclaiming petition was given in for Borthwick, which the Magistrates appointed to be answered, and the papers, books, and keys, were allowed in the mean time to remain in the possession of Mr Ure.

Alexander then advocated to the Court of Session the judgments of the Magistrates of Glasgow, reinstating Borthwick in the possession of his property; and the Magistrates superseded the further consideration of Borthwick's petition, praying that the effects might be put under the management of a proper person for the behoof of all parties, and that the newspaper might be stopped, till such time as the advocacy should be finally disposed of by the Court of Session.

Here the questions between the parties rest, so far as brought before the Magistrates of Glasgow, and a considerable time must necessarily elapse before they can be finally determined, as it is probable they will ultimately come before the Court of Session for decision.

But other proceedings were resorted to for obtaining re-possession of the papers taken from the Sentinel-office. Neglecting altogether the questions with respect to the right of possession depending before the civil Courts, a second application, of the nature of a criminal proceeding, was made by Alexander, with concurrence of the Procurator-Fiscal, to the Sheriff of Edinburgh. The exact terms of this application are not known, as the Procurator-Fiscal did not think proper to furnish Borthwick or his agents with any copies of the proceedings, which the Magistrates of Glasgow readily did, so far as the matter came before them. Under these proceedings, both Mr Stuart and Mr Spalding were examined, and their declarations were taken down in writing; but the Procurator-Fiscal of the county of Edinburgh having refused to allow them to get copies of their declarations, they cannot be inserted in the appendix.

The manuscripts, which had been selected in Glasgow, had been put into the hands of Mr Spalding by Mr Hen-

derson, the agent in Hamilton for Borthwick; and both of them conceiving they had a right of hypothec upon these papers for payment of their accounts, resolved not to part with them without compulsion. Mr Spalding, upon receiving his citation to appear before the Sheriff of Edinburgh, immediately packed up the papers in five separate parcels. The first contained fourteen different letters or communications to the publisher of the Sentinel, *all of the same hand-writing*, which Mr Henderson had sealed up, and indorsed with the name of the writer, previous to Mr Spalding's citation, and this parcel Mr Spalding, after his citation, put under another cover with his own seal. The other four parcels were also numbered and sealed up. The second contained various manuscripts of the same hand-writing as the first parcel. The third parcel contained papers in other two well-known hands, and on the back of this parcel Mr Spalding indorsed the name of the writers, and then enclosed the parcels in a second cover under his own seal. The fourth parcel contained papers relative to the Clydesdale Journal alone, with which Alexander had no concern. Thus, without breaking open these parcels, the Sheriff could not discover the contents, nor the names of the writers of the articles. Upon Mr Spalding admitting in his declaration that he had such parcels of papers in his custody, the Sheriff pronounced an interlocutor,\* ordaining them to be produced. Whereupon Mr Spalding gave in a minute to the Sheriff,† stating the reasons why he conceived himself not bound to deliver them up. Which minute and declaration having been considered by the Sheriff,‡ he ordained the parcels to be delivered up. Mr Spalding still resisted the legality of the order, and refused to deliver, unless compelled by force. Whereupon the Sheriff granted a warrant§ to search for and take possession of the papers; on which Mr Spalding delivered them up, subject to the future orders of the Sheriff of Edinburgh; but it was understood the parcels were not to be broken open, except in the presence of Mr Spalding. Against this judgment of the Sheriff, a full reclaiming petition was given in for Borthwick and Spalding, stating the grounds on which the petitioners conceived the whole proceedings and judgments of the Sheriff to have been illegal.||

\* App. NO. 2. † Ibid. NO. 3. ‡ Ibid. NO. 4. § Ibid. NO. 5.

|| See Prayer of Petition, NO. 6. of Appendix.



On advising this reclaiming petition, however, the Sheriff pronounced an interlocutor, ordering the packets to be opened. And this interlocutor was intimated by letter to Mr Spalding, both of which will be found in the same number of the Appendix.\*

The petition of Borthwick and Spalding having been refused, (*March 25.*) they had recourse to Counsel for advice; and a second reclaiming petition, or rather remonstrance to the Sheriff, was determined on, setting forth the danger that might ensue to more parties than those now before him, if he proceeded to open these papers. This petition, as it is short, will be found in the Appendix.† It was presented on the 26th; and in the course of that day, accounts reached Edinburgh from Fife, that Mr Stuart had wounded Sir Alexander Boswell in a duel. On the 27th, in the forenoon, the Sheriff came to his office, and there, after hearing Mr Jeffrey for the petitioners at considerable length, who stated the meeting that had taken place the day before, and the danger of others from the disclosure of the sealed parcels, and urged the Sheriff not to proceed: yet the Sheriff notwithstanding pronounced an interlocutor refusing the petition; and, having ordered every person to withdraw except Mr Spalding and the Procurator-Fiscal and Clerk, he proceeded to open the sealed parcel No. 1. It was found to contain fourteen different articles under two separate sealed covers. It had previously been agreed by the Sheriff that an articulate inventory should be made of each article, and a copy of it delivered to Mr Spalding; and the task of inventorying the fourteen articles contained in the first parcel having occupied the Sheriff the whole of that forenoon, the opening of the remaining parcels was adjourned till next day at eleven o'clock.

On the 28th, three more parcels were opened and inventoried; the parcel No. 4. containing, as Mr Spalding stated, papers belonging exclusively to the Clydesdale Journal, was reserved for the last, and having been opened afterwards on the 2d of April, the contents were examined and delivered back to Mr Spalding, except eleven articles specified in two separate inventories signed by the Sheriff, as not exclusively relating to that paper. The contents of all the other parcels were retained by the Sheriff. And, as the disclosure of them is considered a matter of great delicacy, it has not been thought proper at present to divulge the nature of their contents.

\* Appendix, NO. 7.

† Ibid. NO. 8.

On the evening of the 27th of March, accounts reached Edinburgh of Sir Alexander Boswell's death. It would appear that the papers, which had come into the hands of the Sheriff of Edinburgh, upon a petition from Alexander, as private prosecutor, with concurrence of the Procurator-Fiscal, had either been put by the Sheriff or by the private party into the hands of the Crown Counsel, for it was almost immediately rumoured in Edinburgh that a criminal indictment was about to be raised against Borthwick, at the instance of his Majesty's Advocate.

After having been examined and dismissed by the Magistrates of Glasgow, Borthwick had come to Edinburgh, and from thence gone to Dundee, and was there living openly, and at the command of his agents, whenever they should require him to return; and in his absence, in consequence of the above surmise, Mr James Bridges, W. S. as his agent, applied to Mr Adam Rolland, the Crown agent, to know if an indictment was actually in preparation, and informed him, that though he (Mr Bridges) did not chuse to give any pledge, he knew that Borthwick was ready to appear to stand trial whenever required. The agent also in the country had, on the 1st of April, offered to produce Borthwick within forty-eight hours to any messenger who had a warrant from the Magistrates of Glasgow for bringing him before them for re-examination. Mr Rolland promised to inform Mr Bridges whenever any indictment was prepared; but before this could be done, a written note came from Borthwick, informing Mr Spalding that he had been apprehended at Dundee, and brought to Edinburgh jail, and desiring to see him. Mr Bridges and Mr Spalding, as his agents, immediately repaired to the jail, but were refused admittance. They were told, that the messenger who had apprehended Borthwick had given instructions that no person should be admitted to him till after his examination, and he said he did so by desire of the agent for the other party; and thereafter, on a renewed application in the course of the same day, they were told that similar instructions had been given in writing by Mr John Hope, the advocate-depute. Upon the first occasion they took a protest,\* and demanded a sight of the warrant of commitment. This they obtained, and it appeared to be a warrant from the Court of Justiciary, for apprehending Borthwick, and committing him to the next tol-booth, *not for examination*, but till liberated in due course

\* Appendix, NO. 9.

of law, proceeding upon a petition presented to them by Sir William Rae, his Majesty's Advocate for his Majesty's interest, and signed by Mr John Hope, as Advocate-depute. A copy of this warrant will be found in the Appendix.\* Mr Bridges then had recourse to Counsel, and by their advice presented a petition to the Court of Justiciary, for having Borthwick admitted to bail. This petition was laid by the Clerk of Justiciary before the advocate-depute, who made remarks thereon; and the whole having been considered by the Lord Justice Clerk, his Lordship pronounced an interlocutor, finding that the crime charged against Borthwick was not bailable and therefore refusing the desire of the petition.†

Thus the matter now assumed a most serious aspect for W. M. Borthwick. The instance had been changed from that of Alexander, his partner, as a private individual, with concurrence of the Procurator-Fiscal, to an indictment at the instance of his Majesty's Advocate, as public prosecutor, for a capital crime; and, forbearing for the present all farther reflection upon a proceeding so unprecedented, the party accused will now proceed to lay as accurate an account as possible of his trial before the public.

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## INDICTMENT AND DEFENCES.

GEORGE, &c. Whereas it is humbly meant and complained to us by our right trusty Sir William Rae of St Catharines, Baronet, our Advocate for our interest, upon William Murray Borthwick, printer, lately residing in Hamilton, present prisoner in the gaol of Edinburgh, THAT ALBEIT by the laws of this and of every other well governed realm, theft, especially when committed by feloniously opening lockfast or other shut and fastened places of keeping, is a crime of an heinous nature, and severely punishable; YET TRUE IT IS AND OF VERITY that the said William Murray Borthwick is guilty of the said crime of theft, aggravated as aforesaid, actor or art and part, in so far as the said William Murray Borthwick did, on the 11th day of March 1822, or on one or other of the days of that month, or of February immediately preceding, or of April

\* Appendix, NO. 10.

† Ibid. NO. 11.



immediately following, feloniously enter the premises or printing-office occupied by Robert Alexander, editor and proprietor of a newspaper published in Glasgow called "The Glasgow Sentinel," and situated in Nelson-street in Glasgow; and did then and there feloniously open by force and violence, or by false keys or otherwise, to the prosecutor unknown, a locked desk, or otherwise shut or fastened desk, belonging to the said Robert Alexander, and did thereby feloniously obtain possession of the keys of the safe, and other lockfast repositories and places of keeping within the said premises, which keys were then in the said desk; and did then ransack and rummage the whole repositories in the said printing-office, and did then and there wickedly and feloniously steal and theftuously abstract and carry away a paper book containing the names of the subscribers to the said Glasgow Sentinel; as also a list of the subscribers to the said newspaper, a bunch of keys, being the keys of the said safe, and of the rooms and repositories in the said premises; as also a great variety of letters and communications to the editor or proprietor of the said Glasgow Sentinel, and manuscripts and compositions intended therefor; as also many letters and papers relating to the private affairs of the said Robert Alexander, all the property, or in the lawful possession of the said Robert Alexander; and all in the said safe and said desk, or partly in other repositories in the said premises, the said letters, communications, manuscripts, and compositions, and other papers, being particularly enumerated and specified in an inventory hereunto subjoined. And the said William Murray Borthwick having been apprehended and taken before Laurence Craigie, junior, Esq. one of the Magistrates of the city of Glasgow, did in his presence at Glasgow, on the 12th day of March 1822, emit and subscribe a declaration; and having been again apprehended and taken before Adam Duff, Esq. Sheriff-depute of the shire of Edinburgh, did in his presence at Edinburgh, on the 5th day of April 1822, emit and subscribe another declaration: Which declarations, as also two bunches of keys, as also the foresaid paper-book, and the foresaid list of subscribers above described, as also all the papers particularly described in the said inventory hereunto subjoined, as also an inventory dated Glasgow the 30th day of March 1822, subscribed by the said Laurence Craigie, jun. Esq. and witnessed by William Davie and William Legat, and containing one hundred and seven articles, as also two inventories respectively dated at Edin-

burgh 28th day of March 1822, and bearing to be made in presence of Adam Duff, Esq. Advocate, Sheriff-depute of the shire of Edinburgh, and Mr William Spalding, writer in Edinburgh, and each subscribed by the said Adam Duff and William Spalding, as also three white paper wrappers, or envelopes, referred to in the two inventories last above mentioned, and two thereof marked, Parcel, No. 3. and one marked, Parcel, No. 5.; and each of the three paper wrappers or envelopes having a docquet dated Edinburgh 28th March 1822, and subscribed by the said William Spalding and the said Adam Duff; as also a brown paper wrapper, with the initials of the said William Murray Borthwick thereon; as also a copy of the Edinburgh Gazette, dated the 18th December 1821, No. 2970.; as also a copy of the Edinburgh Gazette, of date December 21st 1821, No. 2971; a copy of the Glasgow Sentinel, dated November 28th 1821; a copy of the Glasgow Courier newspaper, of date 18th December 1821; as also a bond or agreement of dissolution of partnership, dated Glasgow, November 27th 1821, relative to the Newspaper and printing concern carried on at the Sentinel-office, Nelson-street, Glasgow; being all to be used in evidence against the said William Murray Borthwick at his trial, will be lodged in due time in the hands of the Clerk of the Circuit Court of Justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. AT LEAST, time and place foresaid, the said book, keys, and all the letters and other papers particularly above mentioned and referred to, were wickedly and feloniously stolen, and theftuously carried away, by means of opening lockfast, or otherwise shut and fastened places of keeping, and the said William Murray Borthwick is guilty thereof, actor, or art and part: ALL WHICH, or part thereof, being found proven by the verdict of an assize, before the Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary, in a Circuit Court of Justiciary to be holden by them, or any one or more of their number, within the Criminal Court House of Glasgow, upon the 22d day of April, in this present year 1822, the said William Murray Borthwick OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming. OUR WILL IS HEREFOR.

*Dated and Signeted 6th April 1822.*

J<sup>A</sup>. ANDERSON.

*INVENTORY of Letters, Communications, Manuscripts,  
and Compositions, referred to in the Criminal Letters  
against WILLIAM MURRAY BORTHWICK.*

1. Letter dated Ayr, August 1821, signed Jane Alexander, and addressed to Mr Robert Alexander, Journal Office, Hamilton.
2. Letter dated 18th May, and initialed J. R.
3. Letter dated Edinburgh, 21st January 1822, signed J. R. and Co. and addressed Mr Alexander.
4. Letter dated Edinburgh, 11th June 1821, signed James M'Glashan, and addressed Mr R. Alexander, Clydesdale Journal-office, Hamilton.
5. Letter dated Hamilton, 22d September 1821, signed Ralph M'Culloch, addressed Mr R. Alexander.
6. Letter dated Steam-Boat, 4th March 1822, signed J. Robertson, addressed R. Alexander, Esq. Sentinel-office, Nelson-Street.
7. Letter dated Edinburgh, 15th February 1822, signed James Robertson and Co. addressed Mr R. Alexander, Sentinel-office, Nelson-street, Glasgow.
8. Letter dated Weekly Chronicle-office, Edinburgh, 21st December 1821, signed David Robertson, addressed R. Alexander, Esq. Sentinel-office, Glasgow.
9. Letter dated 19. King-street, Cheapside, 10th December 1821, signed Jas. M. Taylor, addressed Mr Alexander, Sentinel-office, Nelson-street, Glasgow, N. B.
10. Letter dated December 1821, signed H. M. Borthwick, addressed Mr R. Alexander, Sentinel-office, Glasgow.
11. Letter dated Edinburgh, 30th December 1821, signed Alexander Linning, addressed Mr Robert Alexander, Sentinel-office, 26. Nelson street, Glasgow.
12. Letter dated Hamilton, 20th December 1821, signed H. M. Borthwick, addressed Mr David Alexander, Sentinel-office, Glasgow.
13. Letter dated Edinburgh, 25th January 1822, signed J. Robertson, addressed Mr Alexander, Glasgow Sentinel-office, Nelson-street.
14. Letter dated Hamilton, 10th December 1821, signed H. M. Borthwick, addressed Messrs R. Alexander and Co. Sentinel-office, Glasgow.



15. Letter dated Hamilton, 6th December 1821, signed H. M. Borthwick, addressed Messrs Robert Alexander and Co. Sentinel-office, Glasgow.

16. Letter dated Hamilton, 8th December 1821, signed H. M. Borthwick, addressed Mr Robert Alexander, Sentinel-office, Glasgow.

17. Letter dated Glasgow, 27th November 1821, signed H. M. Borthwick, addressed Mr Robert Alexander, Sentinel-office, Glasgow.

18. Letter dated Edinburgh, 31st January 1822, and signed J. R. addressed Glasgow Sentinel-office, Nelson-street.

19. Letter dated Edinburgh, 29th January 1822, signed J. Robertson and Co. and addressed Mr Alexander, Sentinel-office, Nelson-street, Glasgow.

20. Letter dated London, 29th January 1822, signed p. pro. H. J. Orton, Emmontogue Dentry, addressed Messrs Alexander and Co. Sentinel-office, Nelson-street, Glasgow.

21. Letter dated 153. Fleet-street, December 1. 1821, signed H. Telsham Orton, addressed Messrs Alexander and Co. Sentinel-office, Nelson-street, Glasgow.

22. Letter dated Glasgow, 2d May 1821, signed Wm Todd, addressed the Editor of the Clydesdale Journal.

23. Letter dated Douglas Castle, Saturday, 23d June 1821, signed J. E. Bentinett Saunderson, addressed Mr Borthwick, Clydesdale Journal-office, Hamilton.

24. Letter addressed Veraville, 7th July 1821, signed Arch. Geddes, addressed W. M. Borthwick and Co. Hamilton.

25. Letter dated Netherhouse, Tuesday, 5th June 1821, signed John Paterson, addressed Mr Borthwick, Clydesdale Journal-office, Hamilton.

26. Letter dated Correspondent-office, Edinburgh, 8th February 1822, addressed the Editor of the Glasgow Sentinel, Glasgow.

27. Letter dated Trustee's-office, Edinburgh, 11th February 1822, signed John Stewart, addressed the Editor of the Glasgow Sentinel, Glasgow.

28. Letter dated Edinburgh, 26th January 1822, addressed Messrs Alexander and Co. Glasgow Sentinel-office, Glasgow.

29. Letter dated Rothesay, 25th September 1821, signed Geo. Nelson, addressed Mr Alexander, Journal-office, Hamilton.

30. Letter dated Weekly Chronicle-office, Edinburgh, 16th October 1821, signed David Robertson, addressed Messrs Alexander and Borthwick, Sentinel-office, Glasgow.

31. Letter dated Kintarkeit, Argyleshire, October 16. 1821, signed Rob. Campbell, addressed the Publisher of the Sentinel, No. 26. Nelson-street, Glasgow.

32. Letter dated Edinburgh, October 15. 1821, signed R. W. Niven, addressed Mr Alexander, Glasgow Sentinel-office, Glasgow.

33. Letter dated Kirkoswald Manse, 15th October 1821, signed James Inglis, addressed Clydesdale Journal-office, No. 26. Nelson-street, Glasgow.

34. Letter dated Hamilton, 15th October 1821, signed John Morrison, addressed Mr Robert Alexander, Sentinel-office, 26. Nelson-street, Glasgow.

35. Letter dated Union-place, 10th October 1821, signed A. D. Campbell, addressed Editor of the Clydesdale Journal, 26. Nelson-street.

36. Letter dated Hamilton, 10th October 1821, signed John Morrison, addressed Mr Robert Alexander, 26. Nelson-street, Glasgow.

37. Letter dated Hamilton, 10th October 1821, signed Jas Martin, addressed Messrs Alexander and Borthwick, No. 26. Nelson-street, Glasgow.

38. Letter dated 10th October 1821, signed John M'Intosh, addressed Mr A. Alexander, Sentinel printing-office, Glasgow.

39. Letter dated Stamp-office, Edinburgh, 7th October 1821, signed Thomas Pender, addressed Mr R. Alexander, Glasgow Sentinel, Glasgow.

40. Letter dated Edinburgh, 25th October 1821, signed p. pro. James Robertson, Edd. West, addressed Mr Alexander, Sentinel-office, Glasgow.

41. Letter dated Post-office, Hamilton, 25th October 1821, signed James Roxburgh, addressed Mr R. Alexander, Sentinel-office, Glasgow.

42. Letter dated Edinburgh, 26th October 1821, signed Michael Linning, addressed Mr Robert Alexander, Sentinel-office, Glasgow.

43. Letter dated Hamilton, 25th October 1821, signed Robert Aiton, addressed the Editor of the Sentinel, Glasgow.

44. Letter dated 26th October 1821, signed John Morrison, addressed Messrs Alexander and Borthwick, printers, 26. Nelson-street, Glasgow.

45. Letter dated Weekly Chronicle-office, Edinburgh, 18th October 1821, signed D. Robertson, addressed Alexander and Borthwick, Sentinel-office, Glasgow.

46. Letter dated Weekly Chronicle-office, Edinburgh, 20th October 1821, signed David Robertson, addressed R. Alexander, Esq. Sentinel-office, Glasgow.

47. Letter dated Weekly Chronicle-office, Edinburgh, 25th October 1821, signed David Robertson, addressed Messrs Alexander and Borthwick, Sentinel-office, Glasgow.

48. Letter dated Weekly Chronicle-office, Edinburgh, 24th October 1821, signed David Robertson, addressed Messrs Alexander and Borthwick, Sentinel-office, Glasgow.

49. Letter dated Weekly Chronicle-office, Edinburgh, 23d October 1821, signed David Robertson, addressed R. Alexander, Esq. Sentinel-office, Glasgow.

50. Letter dated Hamilton, 22d October 1821, signed William Muir, addressed Messrs Alexander and Borthwick, No. 26. Nelson-street, Glasgow.

51. Letter dated Ballevoilan, 20th October 1821, signed C. Campbell, addressed Messrs Alexander and Borthwick, Sentinel-office, 26. Nelson-street, Glasgow.

52. Letter dated Greenock, 17th November 1821, signed Jas. Tasker. No address.

53. Letter dated Hamilton, 20th October 1821, signed John Morrison, addressed Messrs Alexander and Borthwick, Sentinel-office, 26. Nelson-street, Glasgow.

54. Letter dated Campbelltown, 18th October 1821, signed H. Stevenson, addressed to the publishers of the Glasgow Sentinel-office, Glasgow.

55. Letter dated Edinburgh, 11th October 1821, signed R. W. Niven, addressed Mr John Morrison, writer, Hamilton.

56. Letter dated Weekly Chronicle-office, Edinburgh, 11th October 1821, signed D. Robertson, addressed Messrs Alexander and Borthwick, Sentinel-office, Glasgow.

57. Letter dated 153. Fleet-street, 5th October 1821, signed H. Felshan Orton, addressed Messrs Alexander and Borthwick, 23. Nelson-street, Glasgow.

58. Letter dated Hamilton, 16th October 1821, signed John Maceachern, addressed Mr Robert Alexander, Sentinel-office, Glasgow.

59. Letter dated Hamilton, 18th October 1821, signed John Morrison, addressed Messrs Alexander and Borthwick, 26. Nelson-street, Glasgow.



60. Letter dated Edinburgh, 16th October 1821, signed Edwd. West, addressed Mr Wm. Alexander, Sentinel-office, Nelson-street, Glasgow.

61. Letter dated Weekly Chronicle-office, Edinburgh, 22d January 1822, signed David Robertson, addressed R. Alexander, Esq. Sentinel-office, Glasgow.

62. Letter dated Edinburgh, Albyn Club, 7th December 1821, signed Rob. Cockburn, addressed the editor of the Sentinel, Glasgow.

63. Letter dated Weekly Chronicle-office, Edinburgh, 26th October 1821, signed David Robertson, addressed Robert Alexander, Esq. Sentinel-office, Glasgow.

64. Letter dated Chronicle-office, Edinburgh, 1st January 1822, signed David Robertson, addressed Mr Alexander, Sentinel-office, Glasgow.

65. Letter dated Weekly Chronicle-office, Edinburgh, 4th February 1822, signed David Robertson, addressed Robert Alexander, Esq. Sentinel-office, Glasgow.

66. Letter dated Dumbarton, Tuesday 18th December 1821, signed John Lennox, addressed Messrs Alexander and Borthwick, Sentinel-office, Nelson-street, Glasgow.

67. Letter dated Stamp-office, Glasgow, 18th December, 1821, signed Robert Spence, addressed to the publishers of the Glasgow Sentinel, Glasgow.

68. Letter dated Weekly Chronicle-office, Edinburgh, 8th December 1821, signed D. Robertson, addressed Robt. Alexander, Esq. Sentinel-office, Glasgow.

69. A note signed William Burness. Without date or address.

70. Letter dated Weekly Chronicle-office, Edinburgh, 4th December 1821, signed David Robertson, addressed Messrs Alexander and Company, Sentinel-office, Glasgow.

71. Letter dated Wamphray, 19th November 1821, signed W. Storrey, addressed Mr Alexander, care of Mr William Todd, Messrs Henry Monteith and Company, George's-square, Glasgow.

72. Letter dated Edinburgh, 27th November 1821, signed Walter Douglas, addressed to the Editor of the Glasgow Sentinel, Glasgow.

73. Letter dated Weekly Chronicle-office, Edinburgh, 20th November 1821, signed David Robertson, addressed to Robert Alexander, Esq. Sentinel-office, Glasgow.

74. Letter dated Weekly Chronicle-office, Edinburgh, 12th November 1821, signed David Robertson, addressed Robert Alexander, Esq. Sentinel-office, Glasgow.

75. Letter dated Weekly Chronicle-office, Edinburgh, 23d November 1821, signed D. Robertson, addressed Robert Alexander, Esq. Sentinel-office, Glasgow.

76. Letter dated Weekly Chronicle-office, Edinburgh, 13th November 1821, signed David Robertson, addressed Robert Alexander, Esq. Sentinel-office, Glasgow.

77. Letter dated Ross near Dumbarton, 8th November 1821, signed H. M. Buchanan, addressed Messrs Alexander and Borthwick, Sentinel-office, 26. Nelson-street, Glasgow.

78. Letter dated 85. Hut. Stt. 12th November 1821, signed Alex. M'Gilvra, addressed the Proprietors of the Sentinel newspaper.

79. Letter dated Edinburgh, 13th November 1821, signed Geo. R. Kinloch, addressed to the Publisher of the Glasgow Sentinel.

80. Letter dated Fruitfield Airdrie, 6th November 1821, signed A. Alex. Mack, addressed to the Editor of the Glasgow Sentinel, Nelson-street, Glasgow.

81. Letter dated Weekly Chronicle-office, Edinburgh, 6th November 1821, signed D. Robertson. No address.

82. Letter dated Weekly Chronicle-office, Edinburgh, 27th October 1821, signed David Robertson, addressed Robert Alexander, Esq. Sentinel-office, Glasgow.

83. Letter dated Edinburgh, 3d November 1821, signed W. Aiton, addressed Mr Alexander, Sentinel-office, Nelson-street, Glasgow.

84. Seventeen writings, bearing to be orders for the Glasgow Sentinel, and numbered from one to seventeen, inclusive.

85. Ten writings, consisting mostly of accounts, and numbered one to ten, inclusive.

86. Twenty-three writings, apparently manuscripts, numbered from one to twenty-three.

87. Twenty-two papers of the description as No. 86. and numbered in the same way.

88. Twenty-one papers of the same description as No. 86. and numbered.

89. Thirty-five papers of the same description as No. 86. and numbered.

90. Thirty-one papers of the same description as No. 86. and numbered.

91. Twenty papers of the same description, and numbered.

92. Twenty-one papers of the same description, and numbered.

93. Twenty-five papers of the same description, and numbered.

94. Sixteen papers of the same description, and numbered.

95. Twenty papers of the same description, and numbered.

96. Nineteen papers of the same description, and numbered.

97. Twenty-five papers of the same kind.

98. Twenty-five papers of the same description as the foregoing, and numbered in the same way.

99. Twenty papers of the same description.

100. Eight papers of the same description.

101. Twenty-nine papers of the same description.

102. Twenty papers of the same description, and numbered.

103. Sixteen papers of the same description.

104. Eleven papers of the same description.

105. Eighteen papers of the same description.

106. A manuscript consisting of seven pieces of paper.

107. Copies of three law papers.

108. A letter without date, beginning with the words, "Dear Sir," and signed "Geo. D. Aiton," addressed on the back thus: "Mr R. Alexander, Glasgow Sentinel-office, Glasgow, per Currie's coach;" quoted on the back thus: "G. D. Aiton, Hamilton, 12th October 1821, enclosing information for a letter to Ld. A. Hamilton."

109. A writing consisting of five half-sheets of letter paper, written on nine pages, beginning on the 1st page with these words: "BURGH REFORM. To Lord Archd. Hamilton, M. P. My Lord;" and ending on the 9th page thus: "I have the honour to be, my Lord, your Lordship's very obedient servant, A Lanarkshire Freeholder. Hamilton, 16th October 1821."

110. A writing consisting of two half-sheets of quarto paper, beginning top of page 1st, "Mr James Stuart. It is perhaps;" and ending on the 4th page with these words: "will be told in due time and place."

111. A writing consisting of a half-sheet of letter or quarto paper, beginning on the 1st page, "To CORRESPONDENTS—Our short residence in Glasgow," having the following words only on the top of page 2d: "he publishes the better."



112. A writing, consisting of seven quarto half-sheets, written in the first thirteen pages thereof, beginning top of page 1. thus:—"BURGH REFORM. To Lord Archd. Hamilton, M. P. My Lord," and ending on the 13th page thus: "I have the honour to be, my Lord, your Lordship's very obedient and humble servant. A Lanarkshire Freeholder. Hamilton, 8th Oct. 1821."

113. A writing, consisting of two sheets of folio paper, written on all the eight pages, beginning on top of page 1.:—"GRAND MUSICAL, FOR CHARITABLE PURPOSES. We heard it rumoured;" and ending bottom of page 8th, thus:—"Song. Tune—A kgh; ksbcc, a. ghtmf. pl. dng o! (set 8 lines of this description.)"

114. A writing, consisting of a folio half-sheet, written on the first page, beginning, "To Correspondents;" ending, "festivals elsewhere."

115. A writing, consisting of a sheet of quarto or letter-paper, written on the four pages, beginning page 1. "Sir Rob. Wilson," and on the top of page 2. "The late Lieutenant James Stuart;" and ending on the 4th page thus: "our avowal of regret."

116. A writing, consisting of three folio half-sheets, written upon the first five pages, beginning on the 1st page, "Lord Archd. Hamilton's expected;" and ending on the 5th page: "further clamour on the subject."

117. A writing, consisting of a sheet of letter-paper, written upon the two first pages, beginning top of page 1.: "To the Editor of the Glasgow Sentinel. Sir, I am a freeholder," &c. and ending page 2d thus: "Yours, a Reader. 5. November 1821." Addressed on the back thus: "To the Editor of the Glasgow Sentinel, *Glasgow*," and having the Glasgow post-mark of 5th November 1821.

118. A writing, consisting of a sheet and a half-sheet of folio paper, written in part on all the five pages, beginning page 1. "To the Editor of the Sentinel. Sir, the Rev. Dr Meek," &c. and ending page 6. thus: "I am, &c. Nuda Veritas; Hamilton, 7th November 1821;" addressed on the back, "The Editor of the Sentinel, Glasgow," and having the Glasgow post-mark of 12th November 1821.

119. A writing, consisting of a sheet of letter or quarto paper, written upon the three first pages, beginning top of page 1. "Parody on the Song of Johnny Cope." Ending page 3. thus: "A hater of quackery." "I owe you 2 postages, but I'll find means to pay them yet!" Addressed on the back, "To the Editor of the Glasgow Sentinel,

Glasgow," and having the Glasgow post-mark of 12th November 1821.

120. A writing, consisting of one folio sheet, written in part on all the four pages, beginning page 1. "EXCISE COURT, HAMILTON. Several law points of considerable," &c. Ending page 3. bottom thus: "their comprehension." The 4th page consists of a letter beginning, "Dear Sir." Signed "Robert Aiton," dated Hamilton, 12th October 1821. Addressed "To the Editor of the Sentinel, Glasgow," having the Glasgow post-mark of 16th October 1821.

121. A writing, consisting of a sheet of letter-paper, beginning page 1. "Sir,—The difference of opinion;"—ending page 4. "Your most obedient servant, Q. V. Glasgow, November 20. 1821. From J. G. Buchanan, writer, Glasgow."

122. A writing, consisting of a sheet of folio paper, beginning top of page 1. "Hamilton, January 1. 1822. My dear Sir." Signed on the 3d page, "Will. Aiton," having a postscript subjoined on the 3d and 4th pages, ending on the 4th page thus: "Give this a place to-morrow, if you can;" addressed thus on the back, "Single sheet only. To the Editor of the Sentinel, Glasgow," having the Glasgow post-mark of January 1. 1822, and also the Hamilton post-mark.

123. A writing, consisting of one folio sheet, beginning top of page 1. "To the Editor of the Sentinel." Ending page 4. "I am, &c. Nuda Veritas. Hamilton, February 8. 1822."

124. A Writing, consisting of two quarto half-sheets, and one folio half-sheet, beginning page 1. thus: "Mr E. Permit me through." On the last page, being the folio half-sheet, is a letter, beginning "Dear Sir;" ending "Yours, truly." (Signed) "Wm. Todd." Addressed on the back, "Mr Alexander, Sentinel-office, Glasgow."

125. A Letter, dated Edinburgh, November 3. 1821. "Mr Alexander, Sentinel-office." (Signed) "R. W. Niven," having the Glasgow post-mark, November 4. 1821.

126. A Letter, dated "Dalzell, November 16. 1821." (Signed) "A. J. Hamilton;" addressed on the back, "To the Editor of the Glasgow Sentinel, Glasgow." Postage marked "paid."

127. A Letter, dated "Edinburgh, October 10. 1822," addressed, "To the Editor of the Sentinel newspaper,

Glasgow." (Signed) "James Wemyss," and franked "James Wemyss."

128. A Letter, dated "Edinburgh, October 11. 1821." Signed "Dun. Stevenson;" addressed, "Messrs. Alexander and Borthwick, Sentinel Office, Glasgow."

129. A Letter, dated "Edinburgh, October 16. 1821." Signed "W. Blackwood."

130. A Letter, dated "Edinburgh, December 1. 1821." Signed "W. Blackwood;" addressed on the back, "Mr Alexander, Sentinel-office, Glasgow."

131. A Letter, dated "Weekly Chronicle-office, Edinburgh, October 17. 1821." Signed "David Robertson;" addressed, "Messrs Alexander and Borthwick, Sentinel-office, Glasgow."

132. A Letter, dated "Garden, January 21. 1822." Signed "James Stirling, jun. of Garden;" addressed, "Messrs Alexander and Company, Sentinel-office, 26. Nelson-street, Glasgow."

133. A Letter, or Card, dated "Lochnell-House, October 15. 1821." from General Campbell, desiring the Sentinel to be continued to be sent to him; addressed, "Messrs Newton and Company, Sentinel-office, Glasgow."

134. A Letter, dated "Edinburgh, January 3. 1822." Signed "R. Downie;" addressed, "Edinburgh, January 3. 1822. The Editor of the Sentinel, Glasgow. R. Downie."

135. A Letter, dated "Edinburgh Advertiser-office, October 13. 1821." Signed "For James Donaldson, William Forrest;" addressed, "To the Editor of the Sentinel, Glasgow."

136. A Letter, signed "Archibald Scott, Procurator Fiscal of the county of Edinburgh;" dated "52. Northumberland-street, February 9. 1822." addressed, "The Publisher of the Glasgow Sentinel newspaper, Glasgow."

137. A Letter, dated "Chronicle-office, Edinburgh, November 16. 1821." Signed "D. Robertson;" addressed, "Robert Alexander, Esq. Sentinel-office, Glasgow."

138. A Letter, or Card, from Sir W. M. Napier; ordering The Glasgow Sentinel newspaper, dated "Milliken, November 19. 1821." addressed, "To the Conductors of the Glasgow Sentinel, at their office, Glasgow."

139. A Letter, signed "W. E. Lockhart," dated "Hawick, November 12." addressed, "To the Editor Glasgow Sentinel, Glasgow."



140. A Letter, signed "Patrick Murray," dated "17. St James's-square, Bath, November 27. 1821." addressed, "The Editor of the Sentinel, Sentinel-office, Glasgow."

141. A Letter, or Card, dated "Arniston, October 26." from Mr Dundas of Arniston, ordering the Glasgow Sentinel to be sent to him, at 77. Queen-street, Edinburgh; addressed, "Mr Borthwick, Editor Glasgow Sentinel, Glasgow."

142. A Letter dated Weekly Chronicle-office, Edinburgh, 30th October 1821, signed David Robertson, addressed Messrs Alexander and Borthwick, Sentinel-office, Glasgow.

J. HOPE, A. D.

*LIST of WITNESSES to be adduced against WILLIAM MURRAY BORTHWICK.*

1. Laurence Craigie, junior, Esq. one of the Magistrates of the city of Glasgow.
2. Mr Robert Thomson, one of the Town-Clerks of Glasgow.
3. Mr William Davie, one of the depute Town-Clerks of Glasgow.
4. William Legat, clerk of the said William Davie.
5. Robert Alexander, editor and proprietor of the Glasgow Sentinel, Nelson-street, Glasgow.
6. David Alexander, now or lately clerk of the said Robert Alexander.
7. William Richardson, now or lately compositor in the Glasgow Sentinel-office, Nelson-street, Glasgow.
8. William Miller, in the employment of the said Robert Alexander in the Glasgow Sentinel-office aforesaid.
9. John M'Donald, porter, now or lately residing in Trongate of Glasgow.
10. Thomas Geddes, post-boy, now or lately in the employment of John Milne of the Tontine Inn or Hotel of Glasgow.
11. Robert Bankhead, now or lately waiter in the said Tontine Inn of Glasgow.
12. William M'Comb, now or lately waiter or boots at the said Tontine Inn of Glasgow.

13. Robert Anderson, waiter, now or lately residing in Gallowgate of Glasgow.

14. John Wilson, now or lately compositor in the Glasgow Sentinel-office, Nelson-street, Glasgow.

15. Alexander M'Glashan, now or lately compositor in the Glasgow Sentinel-office aforesaid.

16. William Spalding, writer in Edinburgh, now or lately residing in Pitt-street, Edinburgh, and now or lately in the employment of Alexander Young, Roger Aytoun, and Robert Rutherford, or one or other of them, writers to the signet in Edinburgh.

17. William Henderson, now or lately writer in Hamilton, in the county of Lanark.

18. Felix Dougharty, now or lately clerk of the said William Henderson, and now or lately residing in or near Hamilton aforesaid.

19. Loudon Robertson, now or lately compositor in the Glasgow Sentinel-office aforesaid, and now or lately residing in East Clyde-street, Glasgow.

20. Alexander Ure, writer in Glasgow.

21. William Bankhead, clerk of the said Alexander Ure.

22. Adam Duff, Esq. Sheriff-depute of the county of Edinburgh.

23. James Currie, clerk in the Sheriff-clerk's office, Edinburgh.

24. John M'Gregor, keeper of the tolbooth of Glasgow.

25. Thomas Simson, clerk to Mr Robert Thomson, one of the Town-clerks of Glasgow.

26. Alexander M'Gregor, writer in Glasgow.

27. William M'Creddie, clerk to John M'Gregor, keeper of the tolbooth of Glasgow.

28. James Reddie, Esq. first Town-clerk of Glasgow.

29. Patrick M'Kay, messenger at arms in Dundee, in the county of Forfar.

30. James Burns, wright at Stockbridge, parish of St Cuthberts, and county of Edinburgh.

31. William Scott, now or lately waiter in the Tontine Inn of Glasgow.

32. John Graham, printer, Saltmarket-street, Glasgow.

33. James Napier, blacksmith in Glasgow, residing in High-street, Glasgow.

34. Robert Caldwell, now or lately clerk in Glasgow, and residing with his mother, Widow Caldwell, in Wylie's Land, Craignestock, Glasgow.

35. Margaret Craig, otherwise Mrs Paterson, keeper of the Wheat Sheaf Tavern, Clyde Terrace, Gorbals of Glasgow.

J. HOPE, A. D.

## LIST OF ASSIZE.

### *Lanarkshire.*

- Robert Findlay of Easterhill.  
 Archibald Lamont of Robroystone.  
 David Laird of Balornock.  
 James M<sup>c</sup>Inroy, younger of Lude.  
 5 Peter M<sup>c</sup>Adam of Easterhouse.  
 William Rae Wilson of Kelvinbank.  
 Walter White of Bankhead.  
 Allan Fullarton of Orchard.  
 John Marshall of Balgraybank.  
 10 John Douglas of Barloch, writer in Glasgow.  
 James Taylor, writer there.  
 Robert Hinshaw, merchant there.  
 William Hamilton, merchant there.  
 James Scott, wood-merchant there.  
 15 William Brown, oil and colour merchant there.  
 William Burrage Cabbel, banker there.  
 Alexander Brown, banker there.  
 James Dunlop, junior, yarn-merchant there.  
 Alexander Muirhead, merchant there.  
 20 David Cross, merchant there.  
 Robert Freeland, junior, manufacturer there.  
 James Lindsay Ewing, merchant there.  
 James Mutrie, manufacturer there.  
 Hugh Smith, merchant in Glasgow.  
 25 John Wood, merchant there.  
 Charles Stirling, junior, merchant there.  
 Thomas Watson, merchant there.  
 Hugh Morrison, manufacturer there.  
 Henry Paul, accountant there.  
 30 Robert Brown, merchant there.

### *Dumbartonshire.*

Lieutenant-Colonel Andrew Geils of Dumbuck.  
 Major John Campbell, at Barrs.



- James Stirling of Cordale Printfield.  
 John Buchanan, younger of Ardoch.  
 35 John Dixon of Levensgrove.

*Renfrewshire.*

- James Smith of Jordanhill.  
 Boyd Alexander of Southbar.  
 Robert Fulton of Hartfield.  
 Andrew Moody of Muirshiells.  
 40 Mathew Rodger of Rossland.  
 Robert Thomson of Camphill.  
 William Wilson, residing at Cowglen.  
 John Scott, banker in Paisley,  
 Francis Martin of Davieland, writer there.  
 William Mather of Burnhouse.

The above is the List of Assize for the Trial of William Murray Borthwick.

D. BOYLE.  
 D. MONYPENNY.  
 A. MACONCHIE.

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I DONALD ANDERSON, macer to the High Court of Justiciary, by virtue of criminal letters dated and signeted the 6th day of April current, raised at the instance of Sir William Rae of St Catharine's, Baronet, his Majesty's Advocate, for his Majesty's interest, against William Murray Borthwick, printer, lately residing in Hamilton, present prisoner in the gaol of Edinburgh. In his Majesty's name and authority, lawfully command and charge you, the said William Murray Borthwick, to compear before the Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary, in a Circuit Court of Justiciary, to be holden by them, or any one or more of their number, within the Criminal Court-house of Glasgow, upon the 22d day of April current, in the hour of cause, (10 o'clock forenoon), there to underlie the law for the crime specified in the said criminal letters, and that under the pains contained in the Acts of Parliament. Of the which criminal letters to the will, with a list of the witnesses' names and designations, who are

to be adduced against you, and a list of the assizers' names and designations, who are to pass upon your assize, I herewith give you a full and exact copy, subscribed by me on each page. This I do upon the 6th day of April 1822 years, before these witnesses, James Waldie and Peter Bunkle, both turnkeys in the gaol of Edinburgh, Thomas Sibbald, governor of the said gaol, and Duncan M'Laren, servant in the said gaol.

DONALD ANDERSON.

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## DEFENCES

FOR

WILLIAM MURRAY BORTHWICK.

LEST it should be supposed that the pannel's general plea of Not guilty, implied a mere denial of his having removed any papers from the office of the Sentinel, he thinks it right to explain more particularly what the real import of his defence is.

For some time prior to the year 1820 the pannel was known to be involved in great pecuniary difficulties. In this situation, and soon before being obliged to compound with his creditors, he was selected, in the month of February of that year, by some individuals, of whom it is at present unnecessary to say more, except that most of them were of high station, as a fit person to be the ostensible conductor of a newspaper called the Clydesdale Journal. A great part of every number of this paper contained the most scandalous attacks upon the private character of those who distinguished themselves by dissenting from the political opinions which it espoused. The only apology which the pannel can offer for this is, that, in so far as he was concerned, he was under controul; and when some of the most improper of these articles appeared, was in London, and the paper was edited by Robert Alexander.

Robert Alexander, who is apparently the principal witness in the present prosecution, and who was then a bankrupt manufacturer, was not a partner in this concern,

though he was paid a weekly salary for his literary aid. The whole papers belonging to the Clydesdale Journal were the private property of the pannel, yet it is for regaining possession of these that a great part of the present charge is made.

In September 1821 a newspaper called the Beacon, which had for some months been published at Edinburgh, was discontinued. The good taste of the public had made the sale of the Journal very limited; but this was thought a proper occasion by its patrons for extending its circulation; and therefore as the Beacon fell in the east, the Sentinel was sent to watch in the west. Alexander was made a partner; and the paper, instead of being published as formerly at Hamilton, was printed and edited at Glasgow.

The paper contained in its new form the same tissue of weekly personal defamation that had distinguished it in its old one. Accordingly an action of damages was raised against the printers, of whom the pannel was one, for an article contained in the very first number.

Another action of the same description has since been raised at the instance of William Hamilton, first bailie of Hamilton; and many more are threatened.

If these threats had been groundless, the pannel would not have allowed them to affect his subsequent conduct. But nobody knows so well as those who were directly concerned in these publications, that there was not a single number of either of them which did not contain many actionable libels.

The pannel having come at last to see the issue in which this system would probably terminate, made arrangements for giving up the whole concern to Alexander, who had no objections to persist in it. An agreement was accordingly entered into, by which it was settled that the pannel should give up the possession of the premises, and of the books and papers properly belonging to the Sentinel, upon certain conditions.

The most material of these conditions were, that Alexander should pay down L.20 in cash, and should grant bills, with sufficient cautioners, for L.90 more.

Alexander violated this agreement. In particular, he did not grant the bills with proper security for the L.90.

That he was prevented from doing this by the desperate situation of his own affairs, and the miserable circulation of the paper, is perfectly immaterial.



The fact is, that he did not fulfil his engagement. Notwithstanding this, however, he did not scruple to take advantage of the conditional and prospective agreement into which the pannel had entered, and published a notice in the Gazette intimating an absolute dissolution of the copartnery.

These proceedings made it necessary for the pannel to defend himself judicially; and accordingly he, of this date, (December 18. 1821), gave in a petition to the Magistrates of Glasgow, to the terms and object of which it is very material to attend.

It intimates the conditional nature of the agreement, and the violation of it by Alexander; and then concludes with this prayer:—That it may please the Magistrates “to appoint a copy of this petition, and of their deliverance, to be served on the said Robert Alexander, defender, and him to lodge answers thereto within a short space thereafter; and on resuming consideration thereof, with or without answers, to decern and ordain the said defender forthwith to deliver to the petitioner valid bills, with sufficient security, for the said balance of L.60 Sterling, at nine and twelve months from the said 27th of November; and *failing his immediately doing so, find that the defender has not implemented his part of said proffered agreement, and that consequently the pursuer cannot be held to have divested himself of his right, property, and interest in said concern*; which accordingly allow him to resume, or afford him such relief in the premises, or do otherwise further as to their honors shall seem proper.”

It will be observed, that there are two specific demands there made:—1st, That Alexander (who is described as the defender) shall grant the bills; or, 2dly, That if he does not, the pannel (who is denoted as the pursuer) shall be entitled to resume the exercise of his rights as a partner.

The Magistrates having heard the parties, pronounced an articulate interlocutor, adjusting the rights of the parties.

By one part of this judgment it is found, that Alexander was bound to grant bills, with proper security, and he was appointed “to condescend on the security he proposes on the bills before mentioned.”

This order was renewed by another judgment, of this date (January 29.), and again was renewed, *with certification*, by another interlocutor of this date (February 4.), in the following terms:—“On the motion of the pursuer,

ordains the defender to implement the interlocutor of the 29th of January, *within three days* of the intimation hereof to him, or his procurators, with certification."

Intimation of these orders was regularly made, but still the agreement was not fulfilled; upon which the Magistrates finally disposed of the matter by the following judgment:—

" (February 14. 1822.)—In respect the defender has failed to implement the said renewed order, ordains the defender, *within six days* from this date, to deliver the bills, with security, to the pursuer, concluded for in the petition; *and failing his doing so, decerns in terms of the other alternative conclusions thereof. Finally remits to the auditor to tax the pursuer's expenses.*"

The *other alternative conclusion* here referred to, was that part of the petition in which the pannel maintained, that if the bills were not granted, the intended arrangement should be considered as broken up, and that he should be entitled to resume his rights as a partner.

The six days allowed to the defender to lodge the bills passed without his either doing so, or making any application, either to the Magistrates or to the Court of Session, for any alteration of the judgment. He acquiesced in the decree of the Magistrates, and thereby gave the pannel reason to believe that his resumption of his rights as a partner was not to be disputed, unless the bills were granted, which to this hour they never have been.

The pannel did not avail himself of this decree the very instant the six days were out. He indulged his partner with a full week more.

The judgment was pronounced upon the 14th of February, and, of course, the six days expired upon the 20th of that month. But the pannel did nothing till the 1st of March, being the 15th day, when, in every view, the judgment was final and conclusive. Seeing, however, that even at this period there was no attempt either to disturb the judgment or to obey, he, on that day, re-entered the office as formerly, and remained there that day upwards of ten hours. Alexander was present, but although he squabbled a little, and was in very bad humour, and was assisted by his agent Mr James Tod, he never once appeared to dispute the pannel's right to be there.

The pannel, though he had been employed to print many of the offensive personal articles which had appeared in both papers, had not always been permitted to know who they

came from ; but upon this occasion, he saw a great number of them lying about in the office quite openly, in the handwriting of the authors. It had been held out by the pursuers in the different actions that had been raised and threatened against him, that it was his duty to give up the authors ; and that by doing so, he might secure for himself the protection that is usually extended to all printers who disclose their employers. Having seen several things this day which he formerly had no conception of, he saw no reason to doubt why he should continue to bear the whole responsibility of publications in which he had a very subordinate concern. He had no time, however, to do any thing this day, except to look at a few of the papers. He left the office, therefore, in the evening, taking some of the keys with him, as usual, and intended to resume his examination next morning.

But Alexander was too well aware of the nature of the disclosures which he saw might be made, not to resort to the most iniquitous measures for preventing them. He hurried to Hamilton, or caused somebody else to do so, and having got possession of an old caption for L.154. 6s. 7d. that had formerly been taken out upon a bond which had been granted by the pannel to two persons for behoof of his creditors, he gave it to a messenger, and got his partner apprehended that night. The reason for resorting to this old caption obviously was, that it deprived the pannel of the benefit of a new charge. The pannel in vain represented, that the bond had been long ago paid, by sales of his effects. It was his exclusion from the office, and not the real payment of the debt, that was the object ; and therefore he was thrown into prison next morning.

This plot so far succeeded, that he remained in prison from the morning of Saturday the 2d, till the evening of Sunday the 10th of March. His agent prepared a bill of suspension and liberation, which was just about to be presented to the Court of Session, and would unquestionably have been ultimately successful. But he could not afford to litigate in prison with his adversary, who was in possession of the funds, and at large ; and it occurred to his agent, as a much simpler course, just to consign the sum of L.50, for which, though he did not even admit this or any other debt to be due, he had been entered in the Jailor's books, and procured his discharge at once. That agent, accordingly, consigned L.50 out of his own proper funds.

If Alexander had really imagined that the pannel was



not a partner, he had thus gained another week, during which he might have attempted to get the judgment of the Magistrates altered. But no such attempt was made. On the contrary, he applied to the pannel, when in prison, for delivery of the keys, which the prisoner had, as usual, taken away with him. This request was not complied with; but he had recourse to no judicial measures for compelling delivery of them.

On the morning of the 11th, the pannel resumed the exercise of his rights as a partner, in the possession of which he had thus been interrupted. Being conscious of nothing illegal, he did not resume possession clandestinely, but went back at the usual hour, and took witnesses with him.

If the pannel had not already been illegally thwarted in his administration as a partner, or if he had seen any symptoms of an intention to abate the system of obstruction, by which his rights had been defeated, he might probably have renewed his examination of the papers in the office. But he found, that during his imprisonment, a desk in a room where he had been accustomed to write, and which he always considered as his own, had been broken open; and that a safe which was in the office had also been forced, and that a new lock had been put on it. These appearances left him in no doubt, that every means, however violent and extraordinary, would be resorted to, in order to prevent his peaceably exercising his rights. He therefore instantly resolved to remove the papers from the premises. But it is not true, that he got at them by breaking open any lock-fast places. His own desk, of which he had the key in his pocket, had been forced, but had not yet got a new lock put on it, and was open. In this desk he found the new key for the safe; so that the whole premises were open to him, without the necessity of using any fraud or force for access.

He gave the papers which he removed to his agents, partly for preservation, and partly for examination. The Magistrates had found, that the division of the damages, for which the partners were prosecuted, "*must depend on the individual acts of the parties;*" and hence he had a right to prevent the evidence of their accession to these libels from being entirely in the hands of Alexander. Many of the papers, moreover, were necessary for the pannel's defence against the pursuers of these actions in the first instance; and, above all, it was both his duty and his right to secure to himself the power of proving that he was not

the author of them, which he could only do by being able to shew who the real authors were.

Being prevented, by the violence of Alexander, from examining the documents deliberately in the office, he was under the necessity of removing what he took in a mass. But as soon as he could get them looked at, he found that several of them were unnecessary for his defence or protection, and he was in the course of instantly delivering them back, when he learned that any attempt of this kind was needless, as a person whom he had left in the office, with a mandate to keep possession for him, had been forcibly turned out by Alexander's brother, and the door locked. Upon this he deposited them with his agent.

The pannel immediately gave in a petition to the Magistrates, praying that Alexander, and certain other persons, who, by this time, had taken possession, should be ordained to give him peaceable possession, in terms of the foresaid interlocutor; and that, in the mean time, the whole property should be sequestrated, and ultimately sold and divided among the two partners, according to their rights.

Alexander now seeing that the claims of the parties were likely to be fairly adjusted in a court of law, and that the documents were no longer to be left entirely in his hands, and wishing to taint their acquisition by the prisoner, by referring it to a guilty proceeding, and to give a false turn to the whole transaction, made an application to the Magistrates, with concurrence of the Procurator-Fiscal, in which he resorted to the ludicrous and desperate expedient of accusing the pannel of house-breaking and theft.

These two applications gave rise to a great variety of proceedings, which it is unnecessary to detail. The result has been, that the papers are in the custody of various judicial officers; that Alexander has at last found it necessary to appear to dispute the validity of the foresaid judgment of the Magistrates by an advocacy to the Court of Session; and that the pannel, after being liberated from the criminal accusation by the Magistrates, has been accused of the offence set forth in these criminal letters.

When the present charge was made, the prisoner was unnecessarily, and without warning, seized at Dundee, and brought to *Edinburgh in irons*, since which an application for bail has been rejected, in consequence of a refusal to consent to it by the public prosecutor.

These are the facts, and out of these facts the pannel maintains the following defences:—

1. A great part of the papers which he removed were his own absolute property.

2. They were all taken away for the purpose of being merely examined in the first instance; and such of them as this examination shewed that Alexander had the slightest pretence to have, would have been returned to the office, if the pannel had not been prevented from having access to it. Being refused admittance, they were placed in the hands of a respectable agent; and this was perfectly well known to Alexander.

3. The other papers were never intended to be absolutely kept by the pannel, in defiance of any claim by Alexander; but, on the contrary, were lodged with a man of business, under a positive direction to have them furthcoming whenever legally required.

4. It was the *right* of the pannel to take the whole papers away, seeing he did so for the purposes that have been already explained.

He was a partner, and every partner of every such concern is entitled to exercise his own discretion in the use which he may make of the materials of his trade. Alexander had plainly indicated that he meant to persist in the systematic defamation to which the newspaper had been devoted; and that in order to do so more effectually, he delayed and refused to comply with the conditions of the agreement, on the fulfilment of which alone he knew that the pannel could be deprived of his rights, or released from his responsibility as a partner, and yet, at the same time, was using every means to prevent him from interfering with the management of the business. The pannel's rights as a partner and as a defender in the foresaid actions of damages, could not be secured except by acting as he did.

5. This was not only his *right*, but his *duty*. He had been induced to become an instrument for the dissemination of libels, the true character of which can only be perceived by the disgusting task of reading them. It is strange to see it maintained in a court of justice, that such documents are capable of being the subject of a right of property. Having unfortunately committed this offence, he was bound in legal morality to prevent its repetition, and to atone for it by exhibiting the evidence of the real patronage and authorship of the papers.

6. If it should be even supposed that this was neither his right nor his duty, still he acted under the *bona fide* persuasion that it was both. And this belief, even if it should



be held to have been erroneous, is in itself a sufficient defence against a charge of theft, and to entitle the pannel to an acquittal from this most groundless and injudicious prosecution.

*Under protestation to add and eik.*

W. M. BORTHWICK.

*LIST of WITNESSES to be adduced in Exculpation for  
WILLIAM MURRAY BORTHWICK, now or lately prisoner  
in the Tolbooth of Edinburgh.*

1. William Aiton, Esq. Sheriff-substitute of the Middle Ward of Lanarkshire, residing in Hamilton.

2. Robert Alexander, printer, Nelson-street, Glasgow, as a witness, and to produce the books of the Company of R. Alexander and Company, in particular the blotter day-book, cash-book, letter-book, and ledger.

3. George Douglas Aiton, writer in Hamilton.

4. Felix Dougharty, clerk to William Henderson, writer in Hamilton.

5. James Robertson, bookseller, Parliament-square, Edinburgh, as a witness, and to produce, 1st, all letters, or papers, or correspondence between him and Robert Alexander, printer in Glasgow, and James Todd, writer there, respecting the affairs of the said William Murray Borthwick; and in particular, a letter, dated Glasgow, the 11th of March 1822, signed James Todd, and addressed to ——— Robertson, Esq. bookseller, Edinburgh; a letter, dated Sentinel-office, Glasgow, the 13th March 1822, signed R. Alexander, addressed to James Robertson, bookseller, Parliament-square, Edinburgh, and bearing the Edinburgh post-mark of 14th March; and a letter, dated 13th March 1822, signed J. Cunningham, and addressed Messrs J. Robertson and Company, booksellers, Edinburgh; and, secondly, extract bond by W. M. Borthwick and cautioners, to him and James Ritchie, as trustees for the creditors of W. M. Borthwick and Company, dated 25th June 1819, and recorded 8th July 1820; letters of horning and poiding proceeding thereon, and whole charges, and executions of

poining, (particularly against the cautioners) following thereupon; roup-roll of sale following thereupon, and letters of caption against the said William Murray Borthwick; petition to the Sheriff, and whole procedure in such sale; list of preferable debts due by William Murray Borthwick, and said to amount to L. 56. 13s. with the vouchers and instructions of the payment thereof; besides, and in addition to letters first referred to, or of whatever dates the same may be.

6. James Ritchie, stationer in Edinburgh, as a witness, and to produce as above.

7. John Marr, Sheriff-clerk substitute of the Upper Ward of Lanarkshire residing in Lanark.

8. David Robertson, newspaper agent, Weekly Chronicle office, High-street, Edinburgh, residing in Gilmour-Place, Edinburgh, as a witness and haver, to produce the order or orders, or letter or letters of instruction, whatever the form thereof may be, sent to him for obtaining a notice of dissolution of copartnership between William Murray Borthwick and Robert Alexander, inserted in the Edinburgh Gazette, dated in the month of December last.

9. Lawrence Craigie, jun. Esq. one of the Magistrates of the city of Glasgow.

10. Robert Thomson, Esq. one of the Town-clerks of the city of Glasgow.

11. William Snell, Esq. one of the Magistrates of the city of Glasgow.

12. William M'Tyer, Esq. one of the Magistrates of the city of Glasgow.

13. Walter M'Gibbon, now or lately clerk or apprentice to Alexander Ure, Esq. writer, Glasgow.

14. Loudon Robertson, now or lately compositor in the Glasgow Sentinel-office, Nelson-street, Glasgow, and now or lately residing in East Clyde-street, Glasgow, and now or lately residing at Mrs M'Ghee's, Shakespeare's-square, Edinburgh.

15. William Todd, now or lately clerk or salesman in the employment of Henry Monteith and Company, manufacturers in Glasgow, as a witness, and to produce letters from W. M. Borthwick to him, dated 18th December 1821, and 1st and 4th January 1822, or whatever may be the dates thereof.

16. William Graham, jun. Esq. one of the Magistrates of the city of Glasgow.

17. James A. Brown, Esq. one of the Magistrates of the city of Glasgow.
18. Alexander Ure, Esq. writer in Glasgow.
19. William Bankhead, now or lately clerk to the said Alexander Ure.
20. John Galloway, now or lately clerk to the said Alexander Ure.
21. John Currie, now or lately clerk to the said Alexander Ure.
22. David Alexander, now or lately clerk to Robert Alexander, printer in Glasgow.
23. Lockhart Baird, messenger at arms in Hamilton.
24. James Todd, writer in Glasgow, and now or lately one of the partners of the firm of Buchanan and Todd, writers in Glasgow.
25. Robert Caldwell, now or lately clerk in Glasgow, and residing with his mother, Widow Caldwell, in Wyllie's Land, Craignestock, Glasgow.
26. John M'Gregor, keeper of the Tolbooth, Glasgow.
27. William M'Credie, clerk to John M'Gregor, keeper of the Tolbooth of Glasgow.
28. Thomas Simson, clerk to the said Robert Thomson, one of the town-clerks of Glasgow.
29. Alexander M'Gregor, Esq. writer in Glasgow.
30. Andrew Simson, procurator-fiscal of the burgh court of Glasgow, as a witness, and to produce the proceedings in the precognition before the Magistrates of Glasgow, at the instance of R. Alexander and Fiscal against W. M. Borthwick and others.
31. David Gibson, now or lately pressman or compositor in the Glasgow Sentinel-office, Nelson-street, Glasgow.
32. John Wilson, now or lately compositor in the Glasgow Sentinel-office aforesaid.
33. William Richardson, now or lately compositor in the Glasgow Sentinel-office aforesaid.
34. William Millar, now or lately employed in the Glasgow Sentinel-office aforesaid.
35. Alexander M'Glashan, now or lately compositor in the Glasgow Sentinel-office aforesaid, and apprentice to the said W. M. Borthwick.
36. Archibald Glendinning, now or lately workman in the Glasgow Sentinel-office aforesaid.
37. Thomas Geddes, post-boy, now or lately in the employment of John Milne, of the Tontine Inn or Hotel of Glasgow.



38. William M'Comb, now or lately waiter or boots at the said Tontine Inn of Glasgow.

39. Robert Bankhead, now or lately waiter in the said Tontine Inn of Glasgow.

40. Robert Anderson, waiter, now or lately residing in Gallowgate of Glasgow.

41. John Mitchell, messenger at arms, in Hamilton.

42. William Hamilton, Esq. writer in Hamilton, and Chief Magistrate of Hamilton.

43. John Taylor, now or lately apprentice to William Henderson, writer in Hamilton.

44. William Davie, Esq. one of the depute Town-clerks of Glasgow.

45. William Legat, clerk of the said William Davie.

46. Adam Duff, Esq. Sheriff-depute of the county of Edinburgh, as a witness, and to produce the proceedings in the precognition before him at the instance of Robert Alexander and Fiscal against W. M. Borthwick.

47. Archibald Scott, Esq. procurator-fiscal of the county of Edinburgh, as a witness, and to produce the proceedings in the precognition at the instance of Robert Alexander and Fiscal against W. M. Borthwick.

48. James Waldie, one of the turnkeys in the tolbooth of Edinburgh, as a witness, and to produce any letter or letters of instructions, or other order or orders received by him, or by any other at the jail, on or about the day of the said W. M. Borthwick's incarceration, forbidding communication with agents and counsel, or others, with the prisoner, or to that effect.

49. John Gibson, writer in Lanark, as a witness, and to produce execution of poinding at the instance of James Robertson and James Ritchie against W. M. Borthwick, and John and Alexander Borthwick, farmers in Langless, with the warrant for selling these effects, and proceedings which took place thereon.

50. William Scott, now or lately waiter in the Tontine Inn of Glasgow.

51. Andrew M'George, Esq. writer in Glasgow.

52. Patrick M'Kay, messenger at arms in Dundee in the county of Forfar.

53. Robert William Niven, writer to the signet, partner of the firm of Messrs Linning and Niven, W. S. as a witness and haver, to produce all correspondence betwixt him and Robert Alexander, printer in Glasgow, respecting the affairs of William Murray Borthwick, and in particular, a

letter from the said Robert Alexander to the said Michael Linning, Esq. respecting a bill which Mr Linning holds against the said William Murray Borthwick and Company, and to which letter the said Michael Linning, Esq. returned an answer to the said Robert Alexander, of date the 1st of March last, or of whatever dates the same may be.

54. Alexander Turner, messenger at arms, now or lately residing in Glasgow.

55. Robert Hamilton, messenger in Lanark.

56. Robert Aiton, writer in Hamilton.

57. John Fisher, extractor of the Burgh Court Glasgow.

58. Andrew Templeton, Esq. banker in Glasgow.

59. Andrew Mitchell, Esq. writer in Glasgow.

*INVENTORY of PRODUCTIONS by WILLIAM MURRAY BORTHWICK, some time Printer at Hamilton, and now or lately Prisoner in the Tolbooth of Edinburgh, in the Criminal Prosecution at the instance of His Majesty's Advocate for Scotland, against him.*

N. B.—As various writings herein contained are of value in sundry relative civil processes, the particular attention of the public prosecutor and clerk of Court is hereby called to that circumstance, with a view to the safe custody thereof.

1. Letter from Robert Alexander, 4. Portugal-street, Laurieston, Glasgow, addressed to S. S. S. dated Glasgow, 23d June 1820.

2. Letter from the said Robert Alexander, addressed S. S. S. Chronicle-office, Glasgow, dated 26th June 1820.

3. Draft contract of copartnership betwixt the said William Murray Borthwick and the said Robert Alexander, dated 1820.

4. Draft letter of agreement by the said W. M. Borthwick to the said Robert Alexander, dated 5th September 1820.

5. Letter from the said Robert Alexander to the said W. M. Borthwick in answer to the above, dated 5th September 1820.

6. Letter the said Robert Alexander to the said William M. Borthwick, with copy of a proposed advertisement annexed thereto,—letter dated 3d January 1821.

7. Inventory of process at the instance of Felix Dougharty, clerk in Hamilton, against William Murray Borthwick and Company, printers in Hamilton, and proprietors of the Clydesdale Journal, and containing the six following numbers.

7-1. Summons of damages the said Felix Dougharty against the said William Murray Borthwick and Company, and others, before the Bailies of Hamilton, dated 6th August 1821, with execution annexed dated 9th, minute dated the 16th, and interlocutor thereon by the Bailies of Hamilton, dated the 30th days of said month of August and year fore-said.

7-2. A copy of the Clydesdale Journal, printed and published at Hamilton, dated 27th July 1821, No. 66.

7-3. Another copy of the Clydesdale Journal, dated 3d August 1821, No. 67.

7-4. Petition for William Murray Borthwick and Company, and others, to the Bailies of Hamilton, dated the 13th September 1821, and interlocutor thereon of the same date by the Bailies.

7-5. Answers for the said Felix Dougharty to the foregoing petition, dated 18th September 1821.

7-6. Interlocutors *in causa* the said Felix Dougharty against the said William Murray Borthwick and Company, dated 30th August and 27th September 1821.

8. Certificate by John Marr, Sheriff-clerk substitute of the Upper Ward of Lanarkshire, that no report had been lodged proceeding upon the warrant of sale at the instance of Messrs Robertson and Ritchie against the said William Murray Borthwick, dated 6th March 1821.

9. State of sums due by the said William M. Borthwick to the trustees for his creditors, in the handwriting of the said James Robertson.

10. Summons of damages at the instance of James Stuart, Esq. younger of Duncarn, against Alexander and Borthwick, printers and publishers of the Glasgow Sentinel newspaper, and Robert Alexander and W. M. Borthwick, individual partners of the said Company, and David Robertson, Chronicle-office, Edinburgh, dated and signeted the 18th October 1821, with execution thereon, dated 19th October, and interlocutor by Lord Alloway, dated 6th December 1821.



11. Copy letter from the said William Murray Borthwick to the said Robert Alexander, dated Hamilton 4th December 1821.

12. Letter from the said Robert Alexander to the said William M. Borthwick in answer to the foregoing, dated 5th December 1821.

13. Inventory of process before the Magistrates of Glasgow at the instance of the said William M. Borthwick against the said Robert Alexander, consisting of twenty-three numbers.

13-1. Petition the said William Murray Borthwick to the Magistrates of Glasgow, with deliverance and execution of intimation thereon, both dated 18th December 1821.

13-2. Answers for Robert Alexander to the foregoing petition for William Murray Borthwick, dated 20th December 1821, and mandate thereon.

13-3. Copy petition produced therewith.

13-4. Replies for William M. Borthwick to the answers for Robert Alexander, dated 21st December 1821, with interlocutor thereon, dated 24th December 1821.

13-5. Letter of agreement Robert Alexander to the said William Murray Borthwick, dated Glasgow 19th November 1821.

13-6. Minute and dissolution of partnership between the said Robert Alexander and William Murray Borthwick, dated 27th November 1821.

13-7. Memorial for the said Robert Alexander in the said process, dated 2d January 1822, and interlocutor thereon, dated 3d January 1822.

13-8. Draft assignation by the said William M. Borthwick to the said Robert Alexander.

13-9. Answers for the said William Murray Borthwick to the memorial for Robert Alexander, dated 8th January 1822.

13-10. Replies for R. Alexander to the answers for William Murray Borthwick, dated 19th January 1822, with interlocutor annexed thereto, dated 21st January 1822.

13-11. Interlocutor of Court *in causa* William Murray Borthwick against Robert Alexander, dated 23d and 29th January, 4th and 14th February 1822.

13-12. Note of pursuer's expenses *in causa* William Murray Borthwick against R. Alexander, with auditor's report thereon, dated 27th February 1822, as also interlocutor, dated 4th March 1822.

14. Draft letter William Murray Borthwick to Mr William Todd, Glasgow, dated 18th December 1821.

15. Letter William Todd to William Murray Borthwick, dated Glasgow 28th December 1821.

16. Letter the said William Murray Borthwick to Mr William Todd, dated Hamilton 1st January 1822.

17. Draft letter William Murray Borthwick to Mr William Todd, dated 4th January 1822.

18. Letter the said Mr William Todd to William Murray Borthwick, dated 4th January 1822.

19. Inventory of second process, being process of count and reckoning and payment before the Magistrates of Glasgow at the instance of William Murray Borthwick and Co. against R. Alexander, consisting of fourteen numbers.

19-1. Petition for the said William Murray Borthwick to the Bailies of Glasgow, with deliverance thereon, dated 21st January 1822, and execution of service annexed of same date.

19-2. Answers for R. Alexander to the said petition, dated 22d January 1822.

19-3. Replies for William Murray Borthwick and Co. to the said answers, with interlocutor annexed, dated 31st January 1822.

19-4. A small book containing disbursements, &c. and written on at both ends.

19-5. Account of intromissions rendered by the defender, with marking signed "D. A."

19-6. Minute and condescendence for William Murray Borthwick and Co. in the above action of count and reckoning.

19-7. Minute for Robert Alexander, dated 13th February 1822.

19-8. Answers for William Murray Borthwick and Co. to said minute, 15th February 1822, with interlocutor annexed, dated 1st March 1822.

19-9. Blotter-book produced and referred to in the foregoing minute and answers, being No. 10. of process, *part enclosed and sealed*.

19-10. Minute for Robert Alexander in the foregoing process, dated 23d March 1822.

19-11. Answers for William Murray Borthwick and Co. to the above minute for R. Alexander, 28th March 1822, with interlocutor thereon, dated 12th April 1822.

20. Letter the said Robert Alexander to William Murray Borthwick, dated Glasgow 24th December 1821.

21. Letter William Murray Borthwick to William Henderson, Esq. writer in Hamilton, dated Glasgow 4th March 1822.

22. Missive letter the said William Murray Borthwick to the said William Henderson, dated Glasgow 11th March 1822.

23. Assignation following thereon the said William M. Borthwick to the said William Henderson of the sum of L.50 Sterling, dated 6th April 1822.

24. Summons of wrongous imprisonment, oppression, and damages, at the instance of the said William Murray Borthwick against James Robertson, bookseller in Edinburgh, James Ritchie, stationer there, and the said Robert Alexander, dated and signeted the 14th of March 1822, with execution annexed, dated 15th March 1822.

25. Execution thereof on a paper apart, dated 14th March 1822.

26. Inventory of process before the Magistrates of Glasgow at the instance of the said William Murray Borthwick against the said Robert Alexander and others, consisting of fourteen numbers, with a marking thereon by R. Alexander.

26-1. Petition of William Murray Borthwick to the Magistrates of Glasgow against R. Alexander, James Todd, and David Alexander, dated 11th March 1822, with deliverance thereon and execution annexed of same date.

26-2. Answers for R. Alexander, David Alexander, and James Todd, to the foregoing petition for William Murray Borthwick, dated 13th March 1822.

26-3. Certificate of William Murray Borthwick's imprisonment and liberation, referred to in the foregoing answers.

26-4. Letter Messrs Linning and Niven, writers to the signet, to Mr James Todd, writer in Glasgow, dated 12th March 1822, referred to in answers.

26-5. Replies for William Murray Borthwick to the answers for R. Alexander, David Alexander, and James Todd, with interlocutor annexed thereto, dated 18th March 1822.

26-6. Petition of William Murray Borthwick to the Magistrates of Glasgow, with interlocutor thereon, dated 21st March 1822.

26-7. Printed copy of summons of damages, referred to in the said petition.



26-8 Answers for Robert Alexander to the petition for W. M. Borthwick, dated 23d March 1822, with interlocutor thereon, dated 27th March 1822.

27. Petition for the said William Murray Borthwick and William Spalding, writer in Edinburgh, to the Sheriff-depute of Edinburgh, presented 23d March 1822, with interlocutor thereon by the Sheriff, dated 25th March 1822.

28. Petition the said William Murray Borthwick and William Spalding to the Sheriff-depute of Edinburgh, presented 26th March, and interlocutor thereon 27th March 1822.

29. Summons of damages before the Court of Session, William Hamilton, writer in and Chief Magistrate of Hamilton, against the said W. M. Borthwick, Robert Alexander, and George Douglas Aiton, dated and signeted the 19th March 1822, with execution annexed, dated 22d March 1822.

30. Summons of damages the said William Hamilton, against the said W. M. Borthwick, George Douglas Aiton, and William Aiton, Sheriff-substitute of Lanarkshire, residing in Hamilton, dated and signeted 19th March, with execution annexed, dated 20th and 21st March 1822.

31. Certified copy, warrant by the Lord Justice Clerk, against the said W. M. Borthwick, dated April 1st 1822, with certificate thereon by Patrick McKay, messenger at arms, dated 4th April 1822.

32. Instrument of protest William Spalding, writer in Edinburgh, against James Waldie, turnkey of the jail of Edinburgh, under the hands of James Bridges, N. P. dated 4th April 1822, with certification thereon by John Fenton and John Thomson, dated 11th April 1822.

33. Petition of the said William Murray Borthwick to the Lords of Justiciary, with remarks thereon by Mr John Hope, Advocate-depute, and interlocutor annexed thereto, by the Lord Justice Clerk, refusing the same, all dated April 5. 1822.

34. Petition to the Lords of Justiciary, by the said W. M. Borthwick, to be allowed communication with his Counsel and Agent, with marking thereon by Mr Rolland, Crown-Agent, dated 6th April 1822.

35. Letter the said W. M. Borthwick to the said William Spalding, dated Dundee, 23d March 1822.

36. Letter the said W. M. Borthwick to the said William Spalding, dated Perth, 24th March 1822.

37. Letter the said W. M. Borthwick to the said William Spalding, dated Dundee, 29th March 1822.

38. Letter the said W. M. Borthwick, to Mrs Borthwick, his wife, dated at Dundee, 30th March 1822.

39. Prospectus of a weekly newspaper, to be called the Paisley Observer, and to be conducted on liberal independent and constitutional principles, dated Paisley, 13th January 1821.

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Matters being thus prepared for the trial, which was to take place before the Circuit Court of Justiciary to be held at Glasgow, W. M. Borthwick was removed from the tolbooth of Edinburgh to Glasgow, in the custody of a messenger, on Thursday the 18th of April, (the day on which the Circuit Court commenced), and was transmitted from county to county as a common felon, though he applied for leave to transport himself at his own expense, which was refused, and he was lodged in Glasgow jail, and confined among the felons who were to be tried at the same circuit, and allowed nothing but jail fare, and, at first, a cell so damp, as greatly to injure his health.

Two eminent Counsel from Edinburgh were retained to plead for him. His defences were lodged along with the productions necessary to be made; all the witnesses who were to be examined on his part were cited to attend; and his Agent from Edinburgh, and one of his Counsel, (Mr Henry Cockburn) had repaired to Glasgow, when, on the evening of the 19th, W. M. Borthwick was informed that his trial could not take place till the 24th.

His other Counsel (Mr James Moncrieff) was also about to proceed to Glasgow, to be present on the 24th. But on the 22d was informed, by a message from the Crown Agent in Edinburgh, that the trial was to be given up for a time, and in consequence did not set out.

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On 24th April W. M. Borthwick, accused of stealing certain documents from the office of the Sentinel newspaper, was put to the bar.

Present, The Right Honourable Lords SUCCOTH and MEADOWBANK.

Counsel for the Crown—JOHN HOPE, Esq. Advocate.

Counsel for the Prisoner—HENRY COCKBURN, Esq. Advocate.

The Clerk of Court was about to read the indictment, when Mr Hope rose, and spoke nearly as follows:—

MR HOPE—I shall save your Lordships the trouble of hearing the indictment read, as I do not mean to proceed at present with the case. I have, therefore, to move your Lordships to desert the diet *pro loco et tempore*, and to grant a new warrant for the commitment of the prisoner. And, I have to state also, that very moderate bail will be accepted, in consequence of the delay, if application be made for the prisoner's liberation.

(MR COCKBURN rose to speak)—

LORD SUCCOTH—Mr Cockburn, are you going to object to what the public prosecutor has now proposed?

MR COCKBURN—I am not; because I am not aware that it is in my power to object with effect. But I think Mr Hope said something about bail, and I wish to know what it was he said.

LORD SUCCOTH—He said he would consent to the prisoner's liberation on bail; and would take moderate bail in consequence of the delay.

MR COCKBURN—I think what has been said on the other side about bail, entitles me to make a statement on the part of the prisoner, which, I think, his interest requires should be made.

MY LORDS,—There is nothing which the prisoner more earnestly desires, than that his conduct in this affair should be speedily, fully, and judicially investigated; and accordingly, I speak it with sincerity on his part, it is a grievous disappointment indeed to him, that the trial has not been proceeded with, as he expected, this day. But your Lordships are aware, that there is no way in which an accused person in Scotland can force on his trial, except by availing himself of the provisions of a statute passed in the year 1701. Accordingly, the prisoner being most anxious, since he was accused, that the merits of the accusation should be discussed as soon as possible, that his character may be cleared up, adopted proper measures the very first moment that he could for securing to himself the benefit of that Act; and the days are now running, at the end of which he must unavoidably get rid of this charge one way or other. If he were to go out upon bail, however moderate, he would



lose the benefit of that statute; and therefore I have to intimate, that he does not intend to avail himself of the offer that has now been made, but has made up his mind to remain in jail for the full period during which the law has made it possible to detain him there, rather than deprive himself of the only power he possesses of compelling a discussion. And I am sure, that nothing can more strongly evince his anxiety for a trial, than the fact of his thus remaining in confinement, rather than submit to go at large, even upon moderate bail, with the charge hanging over him. I therefore trust, that, for the sake of justice, if not for the sake of the prisoner, the prosecutor will not fail to bring forward the case again as speedily as possible; and he may depend upon it, that no obstacle will ever be thrown in the way of a trial by the prisoner, whose only object is, to be acquitted if he be innocent, while it is the duty of the prosecutor to convict him if he be guilty.

(Mr HOPE rose)—

Lord MEADOWBANK—That may be a very proper statement by Mr Cockburn for the pannel: but, as there is no question before the Court, there is no occasion for any farther discussion. If the pannel prefers the mode of proceeding which has been explained, he may do so, and he will act accordingly. At present there is no reason for not acceding to the proposal of deserting the diet *pro loco et tempore*.

Lord SUCCOTH—Mr Cockburn can have no objection to that.

Mr HOPE—It is perhaps rather new law, when letters of intimation are served during the period of the pannel's confinement, that liberation on bail after the service of such letters can stop in any way the operation of the Act 1701. But as to this, the pannel's Counsel will judge for his client.

Lord MEADOWBANK—There is no decision on the point.

Mr COCKBURN—No person is *obliged* to find bail: and, though there may be ways in which the public prosecutor may deprive a prisoner of the benefit of the Act 1701, certainly he cannot do so by exacting bail from him.

The following interlocutor was then pronounced:—"The Lords, in respect of the above motion, desert the diet against the pannel *pro loco et tempore*."

William Murray Borthwick was then recommitted on a new warrant.

From the 24th of April, William Murray Borthwick remained in jail, daily expecting that he would be served with new criminal letters at the instance of his Majesty's Advocate; but to his infinite surprise and astonishment, he was served, on the 25th of May, after having lain a full month in jail, and been treated as a public prisoner and felon, with criminal letters, not at the instance of his Majesty's Advocate, but at the instance of his *quondam* partner, Robert Alexander, styling himself editor and proprietor of a newspaper published in Glasgow, called the Glasgow Sentinel, with concurrence of his Majesty's Advocate for the public interest, charging him, as in the former indictment, with stealing papers from the Glasgow Sentinel Office, and citing him to appear before a High Court of Justiciary, to be held at Edinburgh on the 10th day of June current, there to undergo the sentence of that Court for the offence.

The letters are nearly the same as the former, *mutata mutandis*. The inventory of papers said to be carried off is the same, and the list of witnesses to be adduced against the prisoner is also the same, with a few exceptions, as in the former criminal letters, so that it would only be tedious again to repeat these proceedings here. It may however be proper in addition to observe, that by the law of Scotland, when a private party assumes the province of the public prosecutor, he is entitled to demand the public prosecutor's concurrence; but he thereby subjects himself to all the consequences of rash and illegal proceedings, and must himself, as well as the accused, underlie the sentence of the Court.

It will be seen in the sequel whether or not Robert Alexander and his advisers have been prepared for these consequences.

Meantime it will be proper for the pannel to return to the letters of intimation which he served against His Majesty's Advocate, upon his being first committed to jail at his Lordship's instance.

## LETTERS OF INTIMATION.

These letters set forth, "That by petition given in and presented to the Lord Pitmilley, in the name of William Murray Borthwick, printer in Hamilton, thereafter in Glasgow, now prisoner in the tolbooth of Edinburgh, addressed to the Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary. It is humbly shewn, that he

being incarcerated within the said tolbooth, by warrant of the Lord Justice Clerk, for the crime of wickedly and feloniously stealing, and theftuously abstracting and carrying away, from lockfast places, and other repositories in the printing-office and premises of the Sentinel newspaper office, in Nelson-street, Glasgow, alleged to have been committed by him, conform to petition by Sir William Rae of St Catharine's, Bart. his Majesty's Advocate, by Mr John Hope, his depute. In which tolbooth he had continued for some time; and being sincerely desirous of being brought to trial, whereby he might vindicate his innocence of the said alleged crime, therefore he humbly addressed himself to their Lordships for the benefit of the Act of Parliament of King William, made in the year 1701, entitled Act "For preventing Wrongous Imprisonment, and against undue delays in Trials," having, in terms of the said Act, produced the double of the warrant of commitment under the hand of the keeper of the prison, and praying for warrant for letters of intimation for charging his Majesty's Advocate and party appearing by the warrant to be concerned, to fix a diet for his trial within sixty days, in the terms and under the certifications contained in the said Act." Which warrant was accordingly granted of this date (9th April), and duly intimated to his Majesty's Advocate on the same day.

In consequence of these letters of intimation against his Majesty's Advocate, W. M. Borthwick having been advised that he would be entitled to his liberation upon the 4th day of June, being one day after the expiry of the 40th day from his second commitment at the instance of his Majesty's Advocate, presented, of this date (4th June), the following petition to the High Court of Justiciary, before whom he has been cited to appear on the 10th, at the instance of Robert Alexander:—

*"Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, the PETITION of WILLIAM MURRAY BORTHWICK, Printer, sometime in Hamilton, thereafter in Glasgow, now Prisoner in the Tolbooth of Glasgow;*

"Humbly Sheweth—That upon a petition, in name of Sir William Rae, of St Catharine's Bart. his Majesty's Advocate for his Majesty's interest, by John Hope, Esq. Advocate, his depute, charging me with the alleged crime of wickedly and feloniously stealing, and theftuously ab-



abstracting and carrying away, from lockfast places, and other repositories in the printing-office and premises of the Sentinel newspaper office, in Nelson-street, Glasgow, occupied by Robert Alexander, said to be proprietor of the same, a folio book, containing the names of the subscribers to the said newspaper, the keys of the safe, and other repositories of the said office, and an immense mass of letters, papers, and communications, and other documents, all the property, or in the possession of the said Robert Alexander, a warrant was granted by the Lord Justice Clerk on the 1st day of April\* last, and in virtue thereof I was imprisoned† in the tolbooth of Edinburgh. Being conscious of my innocence, I applied to your Lordships for letters or precepts of intimation, directed against the said Sir William Rae, Bart. his Majesty's Advocate, for fixing a diet for my trial, in terms of the Act of Parliament 1701; and your Lordships having granted the desire thereof,‡ I caused charge his Majesty's Advocate to that effect, as the precepts or letters of intimation, and execution thereof, herewith produced, will testify.

“ That I was cited to stand trial,§ at the Circuit Court of Justiciary, held at Glasgow on the 22d day of the said month of April last, by virtue of criminal letters raised against me at the instance of his Majesty's Advocate aforesaid; and that in consequence I was removed from the tolbooth of Edinburgh, upon the 18th day of April last,|| and transmitted to the jail of Glasgow, to be tried there; but when the above day arrived, I was informed that my trial would not take place till the 24th.\*\* Accordingly, on the 24th, I was brought to the bar, when the Court, on the motion of the Advocate-depute, deserted the diet *pro loco et tempore*, and I was recommitted to prison upon a new warrant, and there I have remained ever since.

“ Now seeing that 40 days from the date of the said deserting of the diet against me, and of the new warrant, are more than elapsed,†† I humbly address your Lordships for my liberation, in terms of the Act of Parliament and laws of this realm.

“ May it therefore please your Lordships, in consideration of the premises, to grant warrant for my liberation, as the said laws and Act of Parliament direct.

“ HENRY COCKBURN.”

\* 1st April 1822.

† 4th April 1822.

‡ 9th April 1822.

§ 6th April 1822.

|| 18th April 1822.

\*\* 24th April 1822.

†† 4th June.

Upon this petition the following deliverance was given :

“Edinburgh, 4th June 1822.—The Lord Justice Clerk having considered the foregoing petition, with the letters of intimation, and execution thereof therewith produced, grants warrant for letters of liberation at the petitioner’s instance, for charging the Magistrates of Glasgow, and keepers of their tolbooth, within which the petitioner is detained, to set him at liberty furth thereof, in the terms and under the certifications contained in the Act of Parliament 1701.  
D. BOYLE.”

W. M. Borthwick being thus acquitted at the instance of his Majesty’s Advocate, expected to have been liberated from jail ; but a new application at the instance of Robert Alexander, charging him with the same crime, was made to the Court of Justiciary, upon which, *simul et semel* with the foregoing deliverance, another warrant was granted in the following terms :

“4th June 1822.—The Lord Justice Clerk having considered the foregoing petition, grants warrant to the Magistrates of Glasgow, and keepers of their tolbooth, to detain the person of the said William Murray Borthwick, at the petitioner’s instance, till liberated in due course of law.

“D. BOYLE.”

The prisoner was thus doomed to endure the continued confinement of a jail, and to stand a new trial at the instance of Robert Alexander. The day of trial was fixed for the 10th of June, and preparations were made accordingly ; but the trial was adjourned to the 17th, on account of the trial of James Stuart, Esq. ; and on the 12th day of June, the second day after his acquittal, the warrant of imprisonment was withdrawn without any application whatever by the prisoner ; he was liberated from jail, and the following notice served upon his agent.

“Edinburgh, June 12. 1822.

“Wednesday Forenoon.

“Dear Sir,—Mr Alexander has come to the resolution not to insist in the criminal letters which he has raised against William Murray Borthwick, and I have in consequence withdrawn the warrant at Alexander’s instance against him. I take the earliest opportunity of communicating this to you, that you may not bring forward witnesses, or make any preparation for the trial, the diet of which stands for Monday next. I am, &c.

“R. W. NIVEN.”

## POSTSCRIPT.

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*Edinburgh, 12th June 1822.*

BEING liberated from jail without any application on my part, and without trial, by the voluntary act of my incarcerators, I now respectfully lay before the public an account of the proceedings that have been instituted against me at the instance of the Lord Advocate of Scotland, and of Robert Alexander, my late partner. The account was drawn up from day to day in the form of a narrative, to be ready for the ultimate issue I all along anticipated. A copious index will be annexed of the documents referred to. All argument and reflection have been purposely avoided, that every one may form his own judgment upon the proceedings against me—proceedings which I feel to have been harsh and oppressive in the extreme, and in which the public are not a little interested; for, if there is no remedy competent at common law either against his Majesty's Advocate or the private prosecutor, what has happened to me may be the fate of any of his Majesty's subjects. I commenced the publication of the Clydesdale Journal in support of constitutional doctrines, and I remain till this hour of the same political and constitutional opinions I ever entertained. I was encouraged and supported in my undertaking by gentlemen of the first respectability, until some of my assistants in the work run riot. Having got into a scrape through them, I was obliged to give up all concern in the undertaking, and to commence an action in a civil Court against my partner for restitution of my property, or payment of its value. That action has been hung up and removed to the Court of Session, after a judgment had been given by the Magistrates of Glasgow in my favour, under which I was reinstated in the possession of the Sentinel-office; and during the dependence of that action before the Court of Session, two criminal prosecutions have been instituted against me; one at the instance of his Majesty's Advocate, and the other at the instance of my partner. By force of the statute of King William 1701, c. 1. sometimes called the *Habeas Corpus* Act of Scotland, (not well under-



stood,\* and certainly requiring revisal), I have been liberated from jail, after having endured the most rigorous confinement therein for upwards of seventy days, and been exposed to every privation, and great expense in preparing for my defence in these criminal prosecutions. While my wife and family have been left without support, and my private affairs entirely ruined, my partner has been suffered to remain in possession of my property, using it as his own as an engine of oppression against me, and carrying on the same system of slander and abuse against individuals which ruined my newspaper. Time will shew whether for all these wrongs there is any redress. An action of damages against Robert Alexander alone would be hopeless, and never could produce any recompense to me for the injuries I have suffered.

W. M. BORTHWICK.

\* *Vide* Lord Meadowbank and Mr Hope's Speeches at Glasgow, p. 51.



# APPENDIX.

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## APPENDIX TO PREFACE.

### A.

*Subscription Paper for the Clydesdale Journal.*

*Lanark, 3d February 1820.*

W. M. Borthwick and Co. printers, Lanark, being deeply impressed with a sense of the utility, and great benefit to the public, that might result from the establishment of a loyal weekly newspaper in any centric situation in this county, hereby propose to raise the sum of L.250 to L.300, by a subscription loan, for the purpose of carrying such establishment into effect.

The sum required will be divided into shares of L.25 each, and any number of shares may be subscribed for, agreeable to the wishes of ladies and gentlemen who may be inclined to support such an undertaking.

That, for the security of subscribers, a personal bond, with security, shall be granted to Colonel Alexander Robertson of Hallcraig, for the behoof of all ladies and gentlemen subscribing to said loan.

That said bond shall be made payable at one, two, and three years, by equal instalments, from the date thereof, bearing interest at five per cent per annum.

Subscribers' Names.	No. of Shares.	Amount.
W. E. Lockhart,	- 1 -	L.25 0 0
Sir Henry Stewart,	- 1 -	25 0 0
Sir James Stewart,	- 1 -	25 0 0
Henry Monteith,	- 1 -	25 0 0
Charles Pye,	- 1 -	25 0 0

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Carried forward, L.125 0 0



Subscribers' Names.	No. of Shares.	Amount.
	Brought over,	L. 125 0 0
Douglas,	1	25 0 0
Ad. Douglas,	1	25 0 0
Sir W. Maxwell,	1	25 0 0
J. Hutton,	1	25 0 0
Hugh Bogle,	1	25 0 0
J. Coutts Crawford,	1	25 0 0
		<hr/>
		L. 275 0 0

*Hamilton, 1st March 1820.*

I, Colonel Alexander Robertson of Halcraig, do hereby certify, that W. M. Borthwick has put into my hands a formal bond, written on stamped paper, granted by himself as principal, and Alexander Borthwick in Langlees by Biggar as cautioner, to the Right Hon. Lord Douglas and the other subscribers above, for the sum of L. 275 Sterling, in terms of the within written agreement; and that he has also deposited with me a holograph letter, agreeing to allow the price of papers ordered by the subscribers to run on in part payment of the above subscription. The subscribers may therefore pay Mr Borthwick their respective subscriptions.

ALEX. ROBERTSON.

B.

*Certificate or Manifesto in favour of the Clydesdale Journal, originally drawn up by and in the handwriting of Henry Monteith, Esq. of Carstairs, M. P.*

The Clydesdale Journal was begun under the auspices of some noblemen and gentlemen of the county, and has been conducted, on the whole, to their satisfaction. The Editor, unfortunately, is not himself possessed of sufficient means for carrying it on; and, in addition to the subscriptions alluded to, he would require farther aid, to the extent of L.

Considering the present state of the country, and of this county in particular, in consequence of the great industry used in disseminating publications which have a tendency to unhinge the principles of all classes, and to render the middling and lower classes discontented and unhappy,

we are desirous of encouraging a periodical publication which may counteract their baneful effects; and from the experience already had of the Clydesdale Journal, we recommend it to the patronage of such gentlemen as have not contributed to, and may be disposed to aid such an undertaking.

WM. RAE.

LORD DOUGLAS,

*Per his letter.*

JAS. STEWART, D.

W. E. LOCKHART.

HENRY MONTEITH,

*Per his letter.*

H. STEWART.

ALEX. INGLIS COCHRANE.

NORMAN LOCKHART.

MICHAEL LINNING.

### C.

#### *Additional Subscription Paper for the Clydesdale Journal.*

#### Subscriptions in aid of the Clydesdale Journal.

Jas. Stewart, D.	L.25	0	0
W. E. Lockhart, paid,	25	0	0
Henry Monteith, per letter, paid,	25	0	0
Douglas, paid,	25	0	0
N. L. for			
C. Macdonald Lockhart, paid,	25	0	0
The Hon. Arch. Douglas, per letter, paid,	25	0	0
Michael Linning,	25	0	0
Alexander Miller, paid,	50	0	0
H. Stewart, has already paid,	25	0	0
A. J. Hamilton, paid,	10	0	0

### D.

*Letter from Sir Henry Stewart of Allanton, to William M. Borthwick; with Minute of Committee of Subscribers to the Journal.*

*Allanton-House, 12th March 1821.*

Sir,—It is with considerable regret, that the Committee of the Subscribers to the Clydesdale Journal learn, that before you engaged in that undertaking, you had

*pecuniary embarrassments* to some extent, and that some part of the subscribed funds have been unduly applied in this way, instead of being reserved *exclusively* for the support of the Journal.

In these circumstances, I beg leave to send you a minute of the Committee (signed by a quorum of their number) requesting that you would instantly, (and on the same day you receive this) transfer the *cash-funds* now remaining in your hands to your friend and assistant in the work, Mr George Aiton; and also to make a report to us regarding sundry other things, as set forth in the minute.

We have reason to think, that great improvements might be made on the Journal, and some useful retrenchments in the expense of conducting it. We are satisfied, moreover, that it will be better for you to have merely the printing-business in your own hands, which is in your own line, and give you less trouble. I am, &c.

H. STEWART.

*Minute of the Committee of the Subscribers to the Clydesdale Journal.*

This Committee having been appointed for the purpose of promoting the utility and circulation of the Journal in question, and the other objects of the subscribers, have adopted the following resolutions.

1. The Committee regret to have learnt, from various sources, and from facts now public, that the present proprietor had been embarrassed in his circumstances previous to his embarkation in this undertaking; and they are certain that this circumstance has operated, and still operates to a certain degree, in hurting the prosperity of the concern, and in retarding the accomplishment of the objects which the subscribers had in view in encouraging the institution.

2. In order to counteract this effect, the Committee are desirous that some method most agreeable to Mr Borthwick should be immediately adopted for transferring the proprietorship to the Committee, or some third party, in trust for them, and that Mr Borthwick shall continue as printer, at an adequate salary to be fixed between the parties.



3. The Committee being desirous to satisfy themselves and the subscribers that the business of the concern is conducted in a proper and economical manner, request that Mr B. will furnish them with a detail of the establishment, the number of hands employed, the wages or salaries paid to each, the number and expense of the newspapers purchased, and all the other contingent expenses, together also with the probable returns, in order that they may direct what alterations may appear to be necessary, and what assistance it may be proper to render weekly or otherwise, from funds subscribed, or yet to be contributed.

4. With the same view of giving satisfaction to the subscribers, and of preventing the attachment of blame, or the possibility of complaint against Mr B. the Committee request, that he will furnish them with a statement of the sums derived from the last subscription, and the money expended, and that he will transfer the remainder, or bank receipts for the same, to Mr George Douglas Aiton, his friend and assistant, to be held by him in trust for the subscribers, and to be applied under the directions of the Committee.

The Committee have it in contemplation to adopt other measures for improving the paper, increasing the circulation, &c. but in the mean time, they request Mr B.'s compliance with the above suggestions in the speediest manner, and to the utmost extent in his power.

JAS. STEWART, D.

H. STEWART.

### E.

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*"The laws, the rights,  
The generous plan of power delivered down  
From age to age, by our renown'd forefathers,  
Oh, let them never perish in your hands!"* CATO.

*PROSPECTUS of a Weekly Newspaper, to be called the  
"PAISLEY OBSERVER," and to be conducted on liberal,  
independent, and constitutional principles.*

THE Town of Paisley, with its suburbs, contains a population of above 40,000 inhabitants, equally celebrated for their ingenuity, industry, and intelligence. To the passing events of the memorable times in which we live, no society

of men have been more attentive ; and none certainly have suffered more acutely, in all the evils, both political and commercial, which have agitated, and still agitate the country at large. Among such a population, and under such circumstances, it has often been remarked as peculiarly strange, that no such publication as a Newspaper has been introduced.—The one now advertised is intended to supply the defect.

This Newspaper, therefore, is undertaken on *public grounds*, and will be conducted according to the principles of the constitution, by which the illustrious House of Brunswick was established on the throne of these realms, and by which the Diadem is held in trust FOR THE INTEREST OF THE PEOPLE !

Having thus declared these unexceptionable principles to be theirs, the projectors of this publication need scarcely remind the public, that it will be the object of their efforts, *not to disunite*, but to connect the interests of the Sovereign with the prosperity of the state ; and to identify the rights and prerogatives of the crown with the civil and religious liberties of the people. They shall in sincerity be loyal, but not adulatory : they shall ever rally round the altar and the throne, but not to circumscribe the mercies of the one, nor to enlarge disproportionably the powers of the other. They shall ever condemn as unconstitutional a large standing army in the time of peace. They shall ever reprobate any system of profligacy, which, by extending too widely the influence of the minister, counteracts the exertions of industry, and generates pauperism. They shall ever oppose the erection of barracks (as in the sister island) at every town and village—the imposition of taxes when already overburdened—the use of spies and informers—and, in one word, they shall ever oppose, with all the potency of truth and reason, every arbitrary and anomolous measure, which the bayonet alone can support, and which, by alienating the subject from the ruler, may ultimately produce civil discord and national calamity.

But while the projectors shall be prepared to defend the liberties of the people, they disown any participation with the partisans of universal suffrage and annual parliaments. They wish a reform in *many things*, but not to that extent : they desire a change, but not anarchy and confusion.

Though it is their intention to protect, if it be possible, the poor man from oppression, they are not the advocates of violence or disorder. The lover of riot is the greatest

foe to himself—the worst enemy to his country. Such a man, be his distresses what they may, if he be a defender of lawlessness, or a participator in disturbance, they disclaim him.

With these remarks before the public, the sentiments of the projectors cannot be mistaken. It shall be their study to act up to them fearlessly, independently, and impartially; and, by so doing, they calculate on the liberal patronage of the community. The grounds on which this calculation is made, rest not only on the inhabitants of Paisley already noticed, but on the vast population in the rich country that surrounds it, particularly, the town of Renfrew, the adjacent villages of Neilston, Barrhead, Linwood, Johnstone, Kilbarchan, Lochwinnoch, Beith, Kilburnie, &c. &c. of all which Paisley may be said to be the centre. In this wide field it is known, that few newspapers circulate but those of Glasgow. It is therefore obvious that the Observer, conducted on the liberal and independent principles laid down, will have a decided preference. For advertisements also, such a publication will be peculiarly useful, not to Paisley alone, but the whole county of Renfrew. In this respect it is hoped the Observer will be entitled to a preference, as well for those county notices which appear in the Glasgow papers, as for many advertisements and notices of various kinds, which relate to the district alone, and seldom or never appear in any newspaper at present. The Observer will be issued in Paisley an hour or two before the arrival of any paper from Glasgow, and will be sent to the country proportionably sooner. The miscellaneous selections—the copious extracts from the popular London papers on the one side, and the ministerial journals on the other, will exhibit the same inducements to the reader *as any provincial print whatever*. The London list of prices, and prices of Stocks—Lloyd's list—Liverpool list—the arrivals and sailings of Glasgow, Greenock, and Grangemouth, will afford instruction to the banker and merchant, while a faithful account of fairs and markets will hold out information to the farmer and trader. To all local occurrences, and especially to the *state of trade*, they shall always pay the strictest attention.

But while the projectors have hitherto addressed themselves to merchant and manufacturer, and the male part of the population in general, they are fearful they have too much overlooked the fair sex, a class of readers, to whom they shall at all times be disposed to pay the greatest



homage. They promise therefore, statedly to cull for *them*, a due proportion of poetry, besides the dresses of the birth day—the *elegant* descriptions of the monthly fashions, and a full list of almost every marriage that is *regularly* celebrated, and perhaps occasionally also, the achievements of *Gretna Green!*

Finally.—For themselves, the projectors lay no claim to an extraordinary share of editorial talent, yet in their own comments they shall study to be chaste, interesting, and communicative. Correspondents who shall favour them with their lucubrations, they shall endeavour to encourage; and, united with their own efforts, they are well convinced, that in Paisley and its neighbourhood, they shall never be without a sufficient fund of talent both for the instruction and the amusement of their readers.

The Observer will be printed for the proprietors every Saturday afternoon, by John Neilson, at the Cross, Paisley, to whom all communications (post paid) may be addressed. Price of a single paper 7d.—£.1. 12s. per annum, when delivered in town or sent by post; and £.1. 11s. when called for. The following persons are appointed to receive subscriptions, Mr Neilson, at the office; and Messrs. Weir, Cuthbertson, Auld, Caldwell, jun. Lawrence, Dick, and J. & W. Buchanan, Booksellers, Paisley; and Mr J. Jones, Bookseller, Nelson Street, Glasgow.

The first number of the Observer will be published whenever a sufficient number of Subscribers are procured, notice of which will be given in a future advertisement.

Paisley, 13th January 1821.

## F.

*PETITION for W. M. BORTHWICK, and INTERLOCUTORS of the Magistrates of Glasgow, ordaining the stipulated security by bills, to be delivered by ALEXANDER to him, or otherwise to reinstate him in his property.*

18th December 1821.

*Unto the Honourable the Magistrates of Glasgow, the Petition of W. M. BORTHWICK, Printer in Glasgow.*

Humbly Sheweth—That for some time past, the petitioner, and Robert Alexander, printer in Glasgow, carried on a newspaper and printing concern there, under the firm of Alexander and Borthwick.

That the petitioner having proposed to retire from, and dissolve the concern, on receiving L.20 in hand, and bills with security for the balance of his half interest in the concern, a valuation of the stock on hand, and of the debts due to and by the concern, was made, when the half belonging to the petitioner after the said L.20, was ascertained to be L.90, (L.90 Sterling), which the said Robert Alexander promised to settle by bill with security, at six, nine, and twelve months; and upon the faith thereof a dissolution of the partnership was advertised on the 27th of November last. That the said defender has only granted *his* note for the first instalment, payable at six months, but the other two, payable at nine and twelve months, he still withholds and delays delivery of, which renders this application necessary.

May it therefore please your Honours, to appoint a copy of this petition, and of your deliverance, to be served on the said Robert Alexander, defender, and him to lodge answers thereto within a short space thereafter; and on resuming consideration hereof, with or without answers, to decern and ordain the said defender forthwith to deliver to the petitioner valid bills, with sufficient security, for the said balance of L.60 Sterling, at nine and twelve months, from the said 27th of November; and failing his immediately doing so, to find that the defender has not implemented his part of said proffered agreement, and that consequently the pursuer cannot be held to have divested himself of his right, property, and interest in said concern; which accordingly allow him to resume, or afford him such relief in the premises, or do otherwise farther, as to your Honours shall seem proper, and

According to Justice, &c.

ALEX. URE.

Appoints a copy of the foregoing petition, and of this deliverance, to be served on Robert Alexander, therein designed; and him to lodge answers within forty-eight hours after such service, with certification.

LAU. CRAIGIE.

18th Dec. 1821.

*In Causa* W. M. BORTHWICK against ROBERT ALEXANDER.

Having heard parties in terms of the interlocutor of the 21st of this month, finds, that the interest of the pursuer in the paper called the Clydesdale Journal, to be made over to the defender, has reference to the last number only of that paper, and which was published on the 28th of September last, being the only number of that paper in the publication of which the parties were jointly concerned. Finds, that the pursuer is not bound to convey to the defender the services of the apprentice referred to in the draft of the assignation in process. Finds, that the pursuer is not bound to admit into the said assignation, the obligation proposed to be therein introduced to pay the one half of whatever expenses may be awarded, or sums disbursed in defending the two actions therein referred to, as these, *prima facie*, appear to be charges on the concern, payable by the parties according to their interest therein, and for any variation from this rule of settlement, must depend on the individual acts of the parties; and accordingly reserve to either party any claim he may have against the other for a total or partial relief of the sums to be decerned for in the said processes, or the expenses to be incurred therein. Finds, that the pursuer is not bound to include in the said assignation, the discharge contained in the end thereof. Finally, finds, that the pursuer is not bound to deliver the said assignation, till *simul et semel* therewith he receive delivery of the bills with security stipulated in the production, No. 5. of process. Appoints the defender to alter, in the particulars now pointed out, the draft of the said assignation, in process, and to condescend on the security he proposes in the bills before mentioned.

WM. SNELL.

23d January 1822.

Having heard parties, ordains the pursuer of new, within two days from this date, to alter the draft assignation referred to in the interlocutor of the 23d of this month, and to extend it for signature.

WILLIAM M'TYER.

29th January 1822.

On the motion of the pursuer, ordains the defender to implement the interlocutor of the 29th January, within three



days of the intimation hereof, to him or his procurator, with certification.

WM. SNELL.

4th February 1822.

*Eo die.* The above interlocutor duly intimated to defender's procurator.

For Mr URE, W. M'GIBBON.

*Note for Pursuer.*

The defender having failed to implement the interlocutor of Court, and that the one of the 4th February current, was duly intimated to the defender's procurator, in terms thereof, the pursuer now humbly moves your Honours to pronounce judgment in the cause.

Having resumed consideration of this case, finds the word "pursuer," in the second line of the interlocutor, of the 29th of January, ought to have been "defender," and is accordingly correctly so written in the renewed order of the 4th of this month; and corrects the said interlocutor of the 29th of January accordingly. In respect the defender has failed to implement the said renewed order, ordains the defender, within six days from this date, to deliver the bills with security, to the pursuer, concluded for in the petition; and failing his doing so, decerns in terms of the other alternative conclusion thereof. Finally, remits to the auditor to tax the pursuer's expenses.

WM. SNELL.

14th February 1822.

Having examined the above account, and heard parties' procurators, I am of opinion, that under the deductions noted, the several charges are reasonable. The amount after the deductions being L.7. 2s. 9d., and I tax accordingly.

JA. GALLOWAY, *Auditor.*

27th February 1822.

Having considered the report of the auditor and former procedure, decerns against the defender for L.7. 2s. 9d. Sterling of expenses, besides the dues of extract.

LAU. CRAIGIE, JUN.

4th March 1822.

# APPENDIX

TO

## PROCEEDINGS PREVIOUS TO TRIAL.

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No. 1. p. 9.

*DECLARATION for W. M. BORTHWICK, emitted before the Magistrates of Glasgow, after being apprehended at the instance of his partner, ROBERT ALEXANDER, accused of stealing papers from the Sentinel Office, with Minute and Interlocutors thereon.*

*At Glasgow, the 12th day of March 1822.*

In presence of LAURENCE CRAIGIE, Junior, Esq. one of the Magistrates of said city.

APPEARED WILLIAM MURRAY BORTHWICK, who being examined, declares, that when the Sentinel newspaper began to be published in Glasgow, the petitioner, Mr Alexander, and the declarant, entered into partnership as publishers of it, and as printers; but after they had been in Company only a few weeks, the declarant became dissatisfied, and proposed to sell his interest in the concern to Mr Alexander, who accepted of the proposal, and a bargain being concluded, granted an obligation to the declarant to pay him a certain sum. That from about the 14th of November till about the 16th of December, however, Mr Alexander evaded making payment, or giving the declarant any security or satisfaction, excepting one bill, which the declarant considered of no value, and excepting a small sum, partly from Alexander himself, and partly in payment of accounts which had belonged to the declarant, but which he had made a present of to Alexander. That about the 16th of December the declarant presented an application to the Magistrates, for the purpose of either getting bills with security from Mr Alexander, or of being reinstated in his

interest in the concern ; and, after a good deal of litigation, an interlocutor was pronounced, ordering Mr Alexander to grant bills with security, within six days, or to give the declarant possession, or rather authorizing the declarant (for this was the alternative) to take possession. That this was on the 14th or 15th of February ; and on the Tuesday after the six days had elapsed, Mr Alexander's agent called upon the declarant's agent, and revised and corrected an assignation, which the declarant was to execute, of his interest in the concern in Mr Alexander's favour—after which the declarant was sent for, for the purpose of bills being delivered to him, and he was assured that they would be delivered at two o'clock of that day ; but this was not done. Declares, That on the 28th of February the declarant and his agent called upon Mr Thomson, the assessor in the process above-mentioned, to ascertain whether the meaning of the interlocutor was, that, in the event of bills not being granted, the declarant was to go and take possession of the printing office ; and having heard from Mr Thomson that this was the case, the declarant went to the office the next day at ten o'clock, when he supposed Mr Alexander would be there, and took possession, in presence of two witnesses who accompanied him, and of Mr Alexander himself. That on that occasion he took all the keys he saw hanging up, and put them in his pocket, and he remained in the office till eight o'clock at night, notwithstanding a good deal of personal abuse being heaped upon him by Mr Alexander. That eight o'clock being shutting time, and Mr Alexander having left the office some time before, the declarant gave the keys of the outer-door to one of the workmen, who said he was accustomed to shut it, and then came away. That he previously gave the keys of Mr Alexander's private room to a young man whom Mr Alexander had left in the office, and whose name the declarant thinks is Gray. Declares, That at a late hour of that night the declarant was apprehended upon a caption which Mr Alexander had been at the trouble to go to Hamilton for, and, after being detained till next morning, the declarant was put into prison, and kept there till last Sunday night, when he was liberated, on consigning the amount of the debt under protest, previous to which he had obtained a bill of suspension and liberation ; but it was judged proper not to proceed upon it. That next morning, being the morning of Monday the 11th current, the declarant returned to the printing office about seven o'clock, and resumed possession again. That



some of the office people were then at work, and the compartments of a desk in the room in which the declarant had been accustomed to write, was open, and a new key for the safe lying in it; which key he took out, and by means of it opened the safe, and examined the papers that were in it, and some of which papers he carried away and sealed up, and sent to the office of his man of business, together with the keys, after locking the safe, as he thinks. That one of the desks, or rather compartments of the desk which had been locked, and of which the declarant had the key in his pocket, had been forced open, and so also had the safe, and a new key got for it, and it was the new key that the declarant found in the desk, and made use of. Declares, that his reason for taking away the papers was, that he could not get them examined in the office in consequence of the interference and resistance of Mr Alexander's brother. Interrogated, where he took the papers before he sealed them up and sent them to the office of his man of business? he declines answering this question. Interrogated, whether he shewed them to any person? he declines answering this question also. But being farther interrogated, declares, that he did not give away or destroy any of them, but sent the whole of them to his agent, as also a book which he took out of the safe, and which contained the names of the subscribers for the foresaid publication. Declares that he did not force open any desk, or other lockfast place in the office, or make use of any force or violence whatever, neither did he open any desk, even with a key, for he found all the desks open. That he is not aware of having taken away any private papers belonging to Mr Alexander. That some of the manuscripts of the articles in the Sentinel was among the papers which he took away, but he did not know the particular numbers. And all this he declares to be truth; and he refers to a petition which he yesterday presented to the Court, and to some letters of correspondence betwixt his and Mr Alexander's agent, which he now produced.

W. M. BORTHWICK.  
LAU. CRAIGIE, JUN.

*MINUTE for ROBERT ALEXANDER.*

The papers, books, and keys, mentioned in the preceding petition, appear to be in the possession of Mr Alexander

Ure, writer ; what is mentioned by Mr Borthwick in his declaration, and has been admitted by Mr Ure. The petitioner therefore craves a warrant to search the writing-office of the said Alexander Ure for the said papers, books, and keys, and for bringing the same, if found, into Court.

R. ALEXANDER.

The Bailies having considered the petition and declaration of William Murray Borthwick therein mentioned, and minute for the petitioner, and having heard Mr Alexander Ure on the subject of the motion contained in the said minute, ordains the said Alexander Ure to lodge in the hands of the clerk of Court forthwith the books, papers, and keys mentioned in the said declaration, admitted by the said William Murray Borthwick to be the property of the Company referred to in the proceedings, and to have been carried off by him from the Company's premises, and admitted by Mr Ure to be now in his possession. The said papers, books, and keys to be kept and sealed up by the clerk till disposed of by the Court, with certification.

LAU. CRAIGIE, Jun.

12th March 1822.

I pass from the farther examination of Loudon Robertson under the warrant proceeding on the foregoing petition.

R. ALEXANDER.

Glasgow, 12th March 1822.

No. II. p. 11.

*INTERLOCUTOR pronounced by the Sheriff of Edinburgh, ordaining Mr SPALDING to deliver up the parcels of Papers in his possession.*

Edinburgh, 19th March 1822.

The Sheriff having considered the declaration of William Spalding, and having also heard Counsel for Mr Spalding, in respect it appears from the said declaration that the declarant is in possession of five packets, containing some of the writings, papers, and other documents, which are stated in the petition to have been carried off from the office of the paper called the Glasgow Sentinel, ordains William Spalding to produce the said five packets to the Sheriff in the Sheriff's office, at three o'clock to-morrow, in order

that the said five packets may be sealed with the seals of the Sheriff and of Mr Spalding, and may afterwards remain in the custody and keeping of the clerk of Court until further orders; and in the mean time interdicts, prohibits, and discharges the said William Spalding from putting any of the said papers out of his possession, under certification.

AD. DUFF.

No. III. p. 11.

*MINUTES for Mr SPALDING, stating the reasons why he declined to comply with the order of the Sheriff of Edinburgh.*

*Edinburgh, 20th March 1822.*

With regard to parcel marked No. 4. the said William Spalding is now ready to open the same in presence of the Sheriff *alone*, and to satisfy him that they relate to the Clydesdale Journal, and have no connexion with the Glasgow Sentinel, upon which he submits he is entitled to have them immediately delivered back to him, as there is no party who pretends any right to the papers belonging to the Clydesdale Journal.

With regard to the other four parcels, the said William Spalding offers to produce them upon an assurance being given him that the parcels shall not be opened until this matter shall be determined by a competent civil Court; or if the Sheriff, upon facts shewn to him, find that it is necessary for the ends of justice in this case that they shall be opened up, that this shall be done in presence of the said W. Spalding, as civil possessor and custodier of the writings committed to his confidential charge, and that the said four parcels shall be again sealed up by the Sheriff and the said William Spalding. In making this proposal, the said W. Spalding does not object to these packets being opened, or even papers selected from them by the Sheriff, if it shall appear to him necessary for the administration of justice in this case; but he objects to the proceedings by the other party, which appear to be simulate, and meant, under the pretext of a criminal prosecution, to assist the views of other persons, to defeat civil rights, and to obtain objects which cannot be avowed.



## No. IV. p. 11.

*INTERLOCUTOR by the Sheriff of Edinburgh, again ordaining the Parcels to be delivered up, which Mr SPALDING still refused to comply with, unless compelled by force.*

*Edinburgh, 20th March 1822.*

The Sheriff having considered the declaration of William Spalding this day emitted before him, and the minute relative thereto, ordains the said William Spalding to deliver up the packet which he states contains papers exclusively relating to the Clydesdale Journal, in terms of his own declaration; and ordains him to deliver up the other four packets, in order that they may be subject to any orders which the Sheriff may issue in the course of this precognition; the said packets being to be opened in presence of Mr Spalding, and an inventory taken of the papers in each parcel, and a copy thereof given to Mr Spalding, if he wishes either that said inventory should be taken or said copy delivered to him. Two words deleted before signing.

AD. DUFF.

And the Sheriff's order of this date being now read over to the declarant, he now delivers up the packet containing the papers solely relative to the Clydesdale Journal, in terms of the first order; but he declines to give up the other papers, as he considers it illegal to require or ordain delivery of the said papers, except on the conditions inserted in the first minute for him, unless they are taken by force.

## No. V. p. 11.

*WARRANT granted by the Sheriff to search for and take possession of the Papers, and Note or Memorandum of the Parcels delivered.*

The Sheriff, in respect the said William Spalding declines to give up possession of the four packets last mentioned in the above order, as stated by him on the third page of his declaration, of this date, grants warrant to officers of Court to search for and take into their possession, and bring before the Sheriff the said four parcels, to remain with him subject to his future orders in said precognition.

AD. DUFF.

## No. VI. p. 11.

*PRAYER of PETITION to the Sheriff of Edinburgh for  
W. M. BORTHWICK and Mr SPALDING.*

May it please your Lordship, on considering the premises, *1st*, to allow the petitioners to adduce evidence to prove, that the petitioner, W. M. Borthwick, obtained possession of the documents in question under a legal title; and farther, that he did so under the judicial authority of the Magistrates of Glasgow, declaring him a partner of the concern to which they belonged; *2d*, Upon this evidence being adduced, and the incompetency of the present criminal proceedings being consequently established, to restore to the petitioners, for their respective interests, the five sealed packets forced, by your Lordship's warrant, from the petitioner Mr Spalding; *3d*, At least to ordain that such sealed packets shall be preserved in the state in which they at present are, viz. unopened, and with the seals unbroken, or at any rate, not to allow the seals to be broken and the packets opened, without hearing the petitioners farther by Counsel; *4th*, and finally, At all events, whether the said packets shall be opened or not, to ordain that they shall be preserved in such safe custody, and under such undoubted precautions for their security, as whether they remain in your Lordship's hands or be transmitted by your Lordship into the hands of other parties, may make them certainly forthcoming to all having interest, and prevent the possibility of their destruction, whether by neglect or otherwise.

According to Justice, &c.

J. IVORY.

## No. VII. p. 12.

*INTERLOCUTOR pronounced by the Sheriff of Edinburgh refusing the Prayer of the Petition for W. M. BORTHWICK and Mr SPALDING, and intimation by the Sheriff-Clerk to Mr SPALDING to attend and see the parcels opened.*

*Edinburgh, 25th March 1822.*—The Sheriff having considered this petition, in respect that the papers in the diffe-

rent packets in question are merely taken possession of *for inspection*, and that there is no reason to doubt that they will be preserved in such safe custody, and under such precautions for their security as the Sheriff may judge necessary, and in such manner as that they may be made forthcoming, as accords of law, refuses the petition.

AD. DUFF.

*Sheriff's-office, Edinburgh,  
25th March 1822.*

SIR,—I am desired to inform you, that the Sheriff has fixed *Wednesday* first, the 27th instant, at 11 o'clock, A. M. in his office, for opening in your presence the five sealed packets referred to in your declararion, and presently in the Sheriff's custody, when it is expected that you will attend.

I am, Sir, your very obedient servant,

JA. WILSON.

Mr William Spalding, writer,  
Pitt-street, Edinburgh.

No. VIII. p. 12.

*SECOND PETITION for W. M. BORTHWICK and Mr SPALDING, praying that the Parcels might be opened in hoc statu.*

*Unto the Honourable the Sheriff-Depute of the County of Edinburgh and his Substitutes, the PETITION of WILLIAM MURRAY BORTHWICK, Printer in Glasgow, and of WILLIAM SPALDING, Writer in Edinburgh, his Agent;*

Humbly Sheweth—That in the precognition now going on before your Lordship at the instance of Robert Alexander, printer in Glasgow, with concurrence of the procurator-fiscal, against the said W. M. Borthwick, and others, the petitioners took the liberty of stating to your Lordship, in a full petition, the whole circumstances of this case, upon which your Lordship was pleased to pronounce the following interlocutor: (March 25. 1822.) “ The Sheriff having considered this petition, in respect that the papers in the different packets in question are merely taken possession of for inspection, and that there is no reason to doubt that



they will be preserved in such safe custody as the Sheriff may judge necessary, and in such manner as that they may be made furthcoming, as accords of law, refuses the petition."

It is not the petitioners' intention now to resume the circumstances of the case, which have so lately and so fully been stated to your Lordship in the former petition, but there are some views of it to which they beg leave to call your Lordship's attention before it is too late, and which they humbly presume have not hitherto been sufficiently impressed upon your Lordship.

In the *first* place, the precognition now depending before you, is entirely subsidiary, and in aid of proceedings to the same effect instituted before the Magistrates of Glasgow, where all the previous questions between the parties have been discussed and are best known; and in the precognition before the Magistrates, a petition similar to the one last before you, was presented against delivery of the papers that are in Glasgow, and that petition the Magistrates, without any difficulty, have appointed to be answered. It seems strange to the petitioners, that in the precognition now before you, more decided measures should be adopted than in the principal precognition.

*2dly*, There is a process instituted before the Magistrates of Glasgow, for sequestrating and putting under the charge of some neutral person the whole property of the Sentinel; and this action should surely be discussed in one way or other before the parcels of papers now in your Lordship's custody are broken open and inspected.

*3dly*, Your Lordship will please be informed, that immediately on opening the parcels now in your custody, disclosures will be made which will most materially affect the rights and interests of third parties, who are not now before you in the present precognition; and as any disclosure of the contents of these parcels may be most prejudicial to them, the petitioners deprecate the exercise of your Lordship's discretion in opening these parcels, when there seems to the petitioners to be no immediate cause for so doing. The papers are surely as safe in your Lordship's custody under sealed covers as open—the interest of third parties is less likely to be affected by any disclosure of the contents, and it does not seem that the purposes of justice in the smallest degree require that these parcels should be immediately opened.

4thly, There is another consideration they wish to submit now to your Lordship, and to them it humbly appears to be *per se* decisive.

The *only possible* object either in recovering or inspecting these papers in the course of this precognition, must be to enable the original petitioner to determine whether there are grounds for a criminal prosecution against the petitioner Mr Borthwick. Now, the charge against him has *no reference whatever to the tenor or contents of the papers* taken away by him from the Sentinel-office. It turns merely upon the fact, whether his taking away the papers from that office was or was not an illegal and criminal taking. The taking itself is admitted,—his possession, and that of his agent, of the papers so taken, is admitted,—and the papers themselves have been seized, and are now in your Lordship's custody. The petitioners admit that they are the correspondence and original manuscripts of the contributors to the Sentinel, and the original complainers do not allege that this is not their true description. For what benefit then should *their contents* now be inspected? and where so many reasons concur for not doing this, what pretext, not of necessity merely, but even of expediency, can be suggested for such a proceeding? If it be surmised that the sealed packets may contain only blank sheets of paper, that the petitioners, in their declarations, may have imposed on your Lordship, and that it is necessary to open the covers, in order to ascertain generally whether the contents correspond with the description given of them, the petitioners *distinctly consent* to any inspection which your Lordship may think fit to direct for these purposes, and have no sort of objection to the parcels being opened by your Lordship in their presence, and their contents so far examined as to satisfy you that they are truly of the description given in the declaration, *provided always*, that when this is done, and your Lordship be certiorated that the papers in your hands are truly those which the petitioners allege them to be, the packets will be again sealed up in their presence, and allowed so to remain, either till the issue of the civil questions now in dependance, or till it be necessary to produce them in any criminal trial or procedure which may afterwards be instituted.

5thly, In reference to the notice just received by the petitioner Mr Spalding, that your Lordship has fixed tomorrow at 11 o'clock, for opening, in his presence, the sealed packets referred to in his declaration, and now in your Lordship's custody, it only remains to observe farther,

that there is another party, as deeply and materially interested as himself in the proceeding thus proposed to be taken, and in the future custody and security of the papers. Mr Henderson, writer in Hamilton, is the general confidential agent of Mr Borthwick in the whole questions, of whatever kind, relating to the business of the Sentinel; and it is he alone who either takes, or from his information is qualified to take, the leading superintendence and direction of the matters therewith connected. The petitioner is agent for Mr Borthwick only in one particular class of questions depending here in Edinburgh, and has neither right nor interest to interfere farther. It was through Mr Henderson, accordingly, that the petitioner obtained the custody of the papers now in your Lordship's hands. And it is to Mr Henderson, of course, that he is chiefly responsible for their safety, as Mr Henderson again is the party properly responsible to Mr Borthwick. Nay, a considerable part of the papers now sealed up under your Lordship and the petitioner's seals, are at this moment also under the seal of Mr Henderson, and were so left by that gentleman in the petitioner's keeping, prior to any citation of the latter under the present proceedings. In these circumstances, it is obviously most material that Mr Henderson should be present at opening the sealed packets. For not only is it necessary, for the petitioner's security, as a prevention of any after question which may be raised against him, in consequence of his inability, through your Lordship's proceedings, to restore the documents intrusted to his care; but farther, it is necessary, for the satisfaction and security of Mr Henderson, who is deeply interested in having it now ascertained, not only that all the papers for which he is accountable to his employer have been removed from his immediate controul, under legal and competent authority, but that complete legal evidence of their having passed into your Lordship's hands has been secured to him, so as to shift the responsibility over to the right shoulders.

Having stated this, the petitioners have no doubt, that however your Lordship may dispose of the present application, otherwise you will at least sist farther procedure, in regard to the papers in dispute, until Mr Henderson can be present. The delay which this can occasion is almost nothing. And no possible injury can thence arise to the interests of any party whatever, whether avowedly or otherwise connected with the present proceedings.



In conclusion, the petitioners humbly beg leave to repeat their protest against all concerned, as contained in the close of their former petition.

May it therefore please your Lordship to take the premises into your consideration; and thereafter to grant the prayers of the petitions formerly presented by the petitioner; or, at least, to delay procedure as to opening the sealed packets in dispute, for such reasonable time as may permit Mr Henderson to give his attendance.

According to Justice, &c.

J. IVORY.

No. IX. p. 13.

*PROTEST against the Jailor of Edinburgh, and all others concerned, for refusing W. M. BORTHWICK'S Agents admittance to him.*

At Edinburgh, and within the jail thereof on the Calton-Hill, on Tuesday the 4th day of April, in the year of our Lord 1822, and of the reign of our Sovereign Lord George IV. by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, the third year, In presence of me, notary-public, and of the witnesses subscribing, compeared personally, William Spalding, writer in Edinburgh, as agent, and also as procurator and attorney for William Murray Borthwick, sometime printer in Hamilton, at present prisoner in the said jail, and passed into the personal presence of James Waldie, upper turnkey of the said jail, in the absence of Thomas Sibbald, the Captain thereof, and there demanded access to the said William Murray Borthwick, who, by the warrant and certificate in the hands of the jailor, appeared to have been that day committed on a charge of theft, for himself, the said William Spalding, and for me, the said notary-public, as also acting for the said William Murray Borthwick; whereupon the said James Waldie stated, that Patrick Mackay, messenger at arms, by whom the said William Murray Borthwick had been so committed, had returned to the jail shortly after first leaving him there, and gave strict injunctions to the said James Waldie, to allow no communication to any person or persons with

the said William Murray Borthwick, till after he should have been examined; which injunctions the said Patrick Mackay said he gave on the authority and by the desire of 'the agent for the other party;' and he accordingly refused all access to the said William Murray Borthwick. The said William Spalding thereupon represented to the said James Waldie, that it was highly oppressive and illegal to refuse access to the prisoner to his agents; and he protested against him for himself, and for the Captain of the jail, as also for the Sheriff and Magistrates of the county and city, his Majesty's Advocate and Deputes, and the agent called the agent for the other party, whosoever he might be, by or through whom such instructions had been given, for damages and relief thereupon, as accords of law. Whereupon, and upon all and sundry the premises, the said procurator asked and took instruments in the hands of me, notary-public subscribing, and engaged forthwith to send a copy of this instrument of protest to the said James Waldie. These things were so done, place and day, month and year of God, and of the King's reign, respectively first above written, before, and in the presence of Alexander MacPherson, outer turnkey of the said jail, and William Wylie, waiter in Oman's Waterloo Hotel, Edinburgh, witnesses specially called and required to the premises, and hereto with me subscribing—*Præmissa Attestor.*

JAMES BRIDGES, *N. P.*

William Wylie, *witness.*

Alexander MacPherson, *witness.*

No. X. p. 14.

*WARRANT of Commitment against W. M. BORTHWICK,  
By the Right Honourable the Lord Justice Clerk.*

Whereas there was this day presented to me, a petition in the name of Sir William Rae of St Catharines, Bart. his Majesty's Advocate for his Majesty's interest, and subscribed by Mr John Hope, Advocate-depute, addressed to the Right Honourable the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, humbly shewing, that William Murray Borthwick, now or lately residing in Hamilton, or in the vicinity, did, on the 11th day of March 1822 years, wickedly and feloniously steal,

and theftuously abstract and carry away from lockfast places, and other repositories in the printing-office and premises of the Sentinel newspaper office, in Nelson-street in Glasgow, occupied by Robert Alexander, proprietor of the same, a folio book, containing names of the subscribers to the said newspaper, the keys of the safe, and other repositories of the said office, and an immense mass of letters, papers, and communications to the said Robert Alexander, and other documents, all the property or in the possession of the said Robert Alexander; in particular, a letter, dated Edinburgh 26th October 1821, signed "Michael Linning," addressed Mr Robert Alexander, Sentinel-office, Glasgow; as also, a letter dated Edinburgh 15th February 1822, signed James Robertson and Co. addressed Mr R. Alexander, Sentinel-office, Nelson-street, Glasgow; as also, a letter, dated Edinburgh, 23d October 1821, signed David Robertson, and addressed R. Alexander, Esq. Sentinel-office, Glasgow: And as the said William Murray Borthwick has absconded, and fled from justice, the present application becomes necessary, it being the intention of the petitioner to bring the said person to trial for the said offence; praying therefore for a warrant, in manner underwritten, as the said petition lodged in the hands of the Clerk of the High Court of Justiciary, bears: These, therefore, grant warrant to, and ordain Sheriffs of shires, Stewarts of stewartries, Magistrates of burghs, Macers of the Court of Justiciary, Messengers at Arms, and all other proper officers of the law, to pass, search for, seize, and apprehend the person of the said William Murray Borthwick, wherever he can be found within Scotland, and to commit him prisoner to the next sure tolbooth, therein to be detained till thence liberated in due course of law: requiring hereby the Magistrates and keepers of such tolbooth to receive and detain him accordingly, for which this shall be a sufficient warrant. Given at Edinburgh, the 1st day of April 1822 years.

D. BOYLE.



## NO. XI. p. 14.

*PETITION for W. M. BORTHWICK, to be admitted to bail, with answer by Mr JOHN HOPE, Advocate-depute, and Interlocutor of Court.*

*Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, the PETITION of WILLIAM MURRAY BORTHWICK, printer in Hamilton, thereafter in Glasgow.*

Humbly Sheweth—That Sir William Rae of St Catharines, Bart. his Majesty's Advocate, for his Majesty's interest, by Mr John Hope, Advocate, his depute, presented a petition to your Lordships, setting forth, that the petitioner on the 11th day of March 1822, did wickedly and feloniously steal, and theftuously abstract and carry away from lockfast places, and other repositories in the printing-office, and premises of the Sentinel newspaper office, in Nelson-street, Glasgow, occupied by Robert Alexander, proprietor of the same, a folio book, containing names of the subscribers to the said newspaper, the keys of the safe, and other repositories of the said office, and an immense mass of letters, papers, and communications to the said Robert Alexander, and other documents, all the property, or in the possession of the said Robert Alexander; in particular, a letter dated 26th October 1821, signed, "Michael Linning," addressed Mr Robert Alexander, Sentinel office, Glasgow; as also a letter dated 15th February 1822, signed James Robertson and Company, addressed Mr R. Alexander, Sentinel office, Glasgow; also a letter dated 23d October 1821, signed David Robertson, and addressed R. Alexander, Esq. Sentinel office, Glasgow. That as the petitioner had absconded and fled from justice, the said application became necessary, it being the intention of the said Sir William Rae to bring the petitioner to trial for the said offence, and therefore praying for warrant in manner therein written. Whereupon the Lord Justice Clerk, on the 1st day of April 1822, granted warrant to and ordained the Sheriffs of shires, Stewarts of stewarties, Magistrates of burghs, Macers of the Court of Justiciary, messengers at arms, and all other proper officers of the law, to pass, search for, seize, and apprehend the person of the petitioner, wherever he could be found within Scotland, and

to commit him to the next sure tolbooth, therein to be detained till thence liberated in due course of law, requiring the Magistrates, and keepers of such tolbooth, to receive and detain him accordingly.

That the petitioner conceives the said petition contains a charge as of an aggravated crime, which the facts do not warrant, the petitioner being in possession, in virtue of a legal warrant, granted by the Magistrates of Glasgow, in his favour; and so much was this the case, that the petitioner having been recently examined at Glasgow, upon the whole facts charged against him, then at the instance of Robert Alexander, with concurrence of the Procurator-Fiscal, he was liberated after examination, without even bail for his appearance.

That in virtue, however, of the above mentioned warrant of your Lordships, the petitioner was apprehended at Dundee, and brought to Edinburgh, in place of being committed to the next tolbooth in terms of the warrant, and was there committed as a felon, and all access to his agents has been denied to him, although he frequently required the jailor to give them access to him, and they repeatedly demanded access from the jailor, under protest, but were refused admission, till he should be examined.

In the mean time, as the warrant is granted for detaining the petitioner till liberated in due course of law, the present application to your Lordships becomes necessary, that he may be admitted to bail in terms of the Act 1701, ch. 6.

May it therefore please your Lordships, on consideration of the real nature of the offence with which he is charged, as appearing upon a reference to the precognition, or other information, to admit the petitioner to bail, which he is ready to find in terms of the said Act and subsequent statutes.

According to Justice, &c.

H. COCKBURN.

*Edinburgh, 5th April 1822.*

The Public Prosecutor is not bound by any proceedings adopted by any private party, or by any opinion formed by a private party, in regard to any particular case. The petitioner is indicted on an indictment, which will be served upon him in the course of this day or to-morrow, charging

the prisoner with the crime of theft, committed by means of opening lockfast or otherwise shut and lockfast places of keeping. The statement as to any defence on the part of the prisoner is premature, and will form the subject of investigation at trial. The petitioner was apprehended at Dundee, when about to leave the country, according to the information of the Public Prosecutor, in a ship bound for America; and under the circumstances of the case, the Public Prosecutor cannot consent to the liberation of the petitioner on bail. But such application is premature, because the petitioner has not been judicially examined before the Sheriff since his apprehension, which will be done this evening or tomorrow, as soon as the former declaration is brought from Glasgow to be read over to him. Until such examination takes place, it would be highly improper, and contrary to all law and practice, to admit the petitioner to communicate with Counsel or Agent, which might entirely frustrate the purposes of a judicial declaration. The petition for a warrant distinctly charges the commission of theft, and that of a very serious and aggravated nature, from lockfast places; and therefore the Public Prosecutor submits, that the case is not bailable.

JOHN HOPE, *D.*

*Edinburgh, 5th April 1822.*

The Lord Justice Clerk having considered the foregoing petition, with the petition on which the warrant of commitment was granted, and what is above-stated on the part of the Public Prosecutor, Finds, That the crime charged against the petitioner is not bailable; and therefore refuses the desire of the petition.

D. BOYLE.



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# LETTER

TO THE HONOURABLE

JAMES ABERCROMBY, M. P.

BY

JOHN HOPE, ESQ.

SECOND EDITION.

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WILLIAM BLACKWOOD, EDINBURGH.

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1822.

# INDEX

IN THE HOUSE OF REPRESENTATIVES

1871-72

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Printed by George Ramsay & Co.

TO  
THE HONOURABLE  
JAMES ABERCROMBY, M. P.

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SIR,

IN the different reports of the speech delivered by you in the House of Commons, on the 25th of June, in moving for a committee of inquiry into the conduct of the Lord Advocate, and the other Law Officers of the Crown in Scotland, there appear a variety of statements and reflections pointed against me, of which I lose no time in taking notice in the most public manner in my power. I am sufficiently well assured of the general accuracy of these reports, in so far as the topics of the present letter are involved, to feel myself justified in taking this step.

The improbability that any occasion will occur in the House of Commons, during the present ses-



sion of Parliament, of which my friends can avail themselves, in order to meet your reflections on my conduct, makes me desirous no longer to delay a public answer to such part of the charges against me, to which it is proper at present to advert.

The charges against me amount in substance to this :—That I had manifested, in the course of a private action, a marked and rancorous spirit of hostility—a “ furious zeal ” against Mr Stuart of Dunearn, originating in party motives ; and that, from these feelings, and in order to create an undue prejudice against Mr Stuart, *in his approaching trial*, I had instituted a wanton and groundless prosecution against a person of the name of Borthwick, on account of transactions in which Mr Stuart might be supposed to be implicated, without ever intending to bring that individual to trial, and that I purposely kept this prosecution hanging over the heads of Mr Stuart and Borthwick, though I did not sincerely believe that there were grounds for a criminal charge against the latter.

The *way* in which a colour was given to this accusation will, on examination, appear to be somewhat singular. And that, in some quarter or other, there has been, in the *preparation* and statement of the charges, *most insidious misrepresentation*, the detail which I am now to make must, I am persuaded, satisfy every one, who will take the trouble to attend to the facts of the case.

In the course of the premeditated and artful ar-

gument which you directed against me, I observe, in the first place, that you have not only thought fit to introduce into a discussion in the House of Commons, the merits of a civil action of damages, (at present in dependence,) instituted by Mr Stuart, against the printer of the Glasgow Sentinel, in consequence of certain paragraphs in that paper alleged by him to be slanderous, but that you have also chosen to make the Line of Defence maintained by the Counsel for the Defendants, and their conduct in the discharge of private professional duty, the subject of animadversion and censure in the British Parliament.

The foundation of the charge against me of malicious prosecution rests on the conduct and feelings, attributed to me as counsel in that action.

Whether I *am* counsel in that case or not, will presently appear.—In the first instance, having been attacked in that character, I wish to draw the attention of the public to the injustice, the illiberality, and, I fear, I must add, the malevolent spirit which that attack manifests in some quarter or other.

An affair sufficiently notorious occurred last year between Mr Stuart and Mr Duncan Stevenson.—Some time thereafter Mr Stuart commenced a correspondence with the Lord Advocate, upon the subject of some alleged libels, said to be published against him in the Beacon. The printers of the Glasgow Sentinel took up this subject, and

expressed (it is said in slanderous terms) their opinion of Mr Stuart's conduct. Mr Stuart (in October 1821) raised a civil action of damages against the printers of that newspaper, on the ground that their remarks were *false*, slanderous, and injurious. Gentlemen of the bar were employed as counsel for the defendants; and it appears that they thought it to be their duty to maintain in substance the following defence, viz.—

That the statements complained of as libellous were all true, and could be proved. In particular, that it could be proved, that Mr Stuart had assaulted Mr Stevenson with a horse-whip;—that Mr Stevenson had defended himself with his cane, till his arms were pinioned by servants, or persons employed by Mr Stuart, or who had been brought by him from Fife, on purpose to be present when he should carry into effect his premeditated design of assaulting Mr Stevenson;—that Mr Stevenson demanded satisfaction for this outrage;—that Mr Stuart, while he admitted having perpetrated the outrage, refused satisfaction;—that Mr Stuart was posted as a coward, a ruffian, and a scoundrel;—that Mr Stuart, at his own expence, printed and published his correspondence with Mr Stevenson, and an account of the whole affair, and also his correspondence with the Lord Advocate.

These were the principal statements contain-



ed in the publication complained of as libellous, and the truth of them was averred by the defendants ; but that *publication* also contained the following observations : “ When the heartless ruffian seeks for revenge for ideal injury, “ by *employing his minions to hold the arms of* “ *the person he abuses*, we would consider “ him undeserving of the satisfaction of a gentleman ; and we would desire to hold him up “ to the unalloyed opprobrium of mankind.”

This passage was also complained of by Mr Stuart, as a *false* and *malicious* libel. On the other hand, the pleading for the defendants concluded by an “ offer to prove, by the evidence of persons well skilled in the laws and practice of honour, that the conduct of the pursuer, in regard to the said affair with Mr Stevenson, “ was most ungentlemanly and deserving of “ every condemnation.”

In short, on the part of the printers, their Counsel denied that the passages are *false*, malicious, or slanderous. They averred that Mr Stuart had made the subject the property of the public press :—that they were entitled to comment on facts brought under public notice by his own publications :—They offered to prove that the facts stated in the alleged libel were true :—They offered to *justify* the libel.

Whether the defendants have evidence to prove these statements I am ignorant : Whether the

above line of defence is competent, in justification, or in mitigation, I am not presumptuous enough to decide. But that the Counsel for the defendants were entitled to state any defence on the part of their clients, which they thought the facts admitted of, is a proposition, the truth of which the spirit of party alone could lead any man to dispute. In reference to the very unfair and extraordinary comments made by you and Sir James Mackintosh on the paragraph of the defence last quoted, it is material to observe, that it is wholly unwarrantable to ascribe that reference to public opinion as necessarily applicable to Mr Stuart's refusal to fight Mr Stevenson. The passage in the newspaper of which Mr Stuart seemed to have most reason to complain, was that already quoted, in which he is accused of employing persons to hold the arms of the man he assaulted. That averment the defendants offer to prove; and the passage in the pleading, to which you adverted in so singular a manner, bears reference, as I understand, generally to the whole of Mr Stuart's conduct, and particularly to his employing men to hold Mr Stevenson's arms.

The paper containing this plea was, I understand, lodged in the Jury Court, in the course of the month of January last. Since that period, Mr Stuart, as I am informed, has not taken one step to forward his case—to obtain the opinion of the Court on the legality and competency of this line

of defence, (if he has any objections to its legality,) or to bring the facts to an issue before a jury. The cause is, however, still in dependence—the legality or relevancy of the plea of the defenders is still *sub judice*, and the opinion of a jury must be taken on the merits of the action, unless it is abandoned by Mr Stuart.

In these circumstances, you and Sir James Mackintosh,—English lawyers,—think fit to make the merits of that action—the pleas maintained by the defendants, and the conduct of their Counsel, the subject of virulent invective in the House of Commons. You pronounce a confident and violent opinion on the case of the defendants, on which the Court and a Jury are still to decide.

On the gross injustice to the defendants, resulting from this perversion of the privileges of Parliamentary discussion, in order to aid the private action of a political associate, and to prepossess and prejudice the minds of the public, from whom the Jury must afterwards be selected, it is needless to enlarge.

But your attack on the Counsel, acting, or supposed to be acting for the defendants, requires more particular animadversion. The character, and privileges, and usefulness of the Bar, and the interests and rights of the subjects at large, are, indeed, assailed in a manner not less novel than alarming, if the conduct of Counsel in a private case, *not yet decided*, is to be the fit and legiti-



mate topic of invective, insinuation, and abuse in the British Parliament. If the characters, the talents, and the professional knowledge, aye, and the motives of Counsel, are to be impeached in the House of Commons, by every violent political partizan, whose friend may be involved in an action of doubtful issue, which they are called upon to defend ; and if the pleas maintained in that action are to be made the subject of popular declamation, and severe stricture in Parliament, an advantage may no doubt be gained to the party in the action in whose favour such interference is exerted : But it is in vain to conceal that this is an advantage gained at the expence of the justice due to the other party, and is a departure from that regard to judicial proceedings, which has ever been observed as one of the most sacred maxims of British Legislation.

A more serious attack upon the privileges, and rights and proceedings of the Bar, or proceedings fraught with more danger to the interests, which private parties may have to defend in Courts of Justice, can hardly be imagined, than have been exhibited in the conduct of yourself and Sir James Mackintosh.

The comments upon the merits of this action seem not to be the only instance, in which you have thought fit to invade the private right and interests of parties, at this very moment litigating in Courts of Law, the points which you have se-

lected as the topics of Parliamentary discussion. You have vehemently maintained that legal property in a newspaper is created by a subscription to a bond of credit to a banking-house for a specific sum, though that very question is at this moment the subject of judicial consideration in a Court of Law. But then it happens that your opinion coincides with the pleas and the interests of a political friend. In like manner, you have chosen to prejudge the merits of two other actions of damages, and have loudly condemned a newspaper, for daring to censure the public conduct of a Magistrate of a Scotch burgh, or to *persecute* him, as you are said to represent the matter. But then that Magistrate happens to be “attached to the noble family of Hamilton,” as you are reported to say, and doubtless may on that ground be entitled to a sacred and inviolable immunity from the political animadversion, of which the Magistrates of Scotch Burghs seem generally to be considered the fair objects. Again, you roundly asserted, as matter of public notoriety, that an official individual in Hamilton had *conducted* a newspaper in that town, who has, in a private action against him, founded on that very averment, denied that responsibility. But then, that action happens to be at the instance of this supporter of the “Noble Family” of Hamilton, and the case of the defendant may in this manner be prejudged and condemned. And last of all, I observe, with unqua-

lified astonishment, that you actually proposed to the Commons of England, to subject to what you are said to call a “full, fair, and open examination,” before a committee of the House, a young and valued friend of mine,—of great promise and ancient family—a private gentleman, *in no public situation whatever*, on the *allegation*, forsooth, that, in this land of liberty, he had dared to write articles in a newspaper, when you must have known, that at this moment a private action of damages was in dependance against that gentleman, which turned on that very allegation. But then that action happens to be at the instance of a conspicuously active political associate; and this unprecedented and inquisitorial examination was expected, probably, to supply the evidence which might be wanting in the legal proceedings of your friend.

But it is not merely on such general grounds that I now wish to notice your conduct. I much rather wish to advert to the want of good taste—of propriety—of candour, which your attack manifests. You—an English barrister—exercising those very rights which you have so directly attacked, and called upon (it may be), to discharge the very same duties, which others in your profession are bound to discharge, have made the conduct and motives of Scotch Counsel, in a private and depending case arising in a Scotch Court, the subject of abuse and personal reflection in the British



House of Commons. The members of your own profession in England will, I am persuaded, unite with the Bar of Scotland, in reprobating the presumption which characterises so unusual a step, and the violent spirit of party and of political hostility which it betrays.

There is something, it must be admitted, peculiarly becoming and graceful on the part of Gentlemen of the Bar of England, who may enjoy the opportunity of public invective in the House of Commons, availing themselves of that advantage, in order to arraign the motives—to censure the conduct—and to question the professional skill and judgment of Scotch Counsel, in the management of a private action, which hitherto has not even advanced so far, as to be brought under the opinion and consideration of the Court to which it belongs. But when the Counsel, who are the object of so unusual an attack, happen to be young gentlemen, recently called to the Bar, whose prospects and professional character may be the more easily injured by the vehement and unqualified impeachment of their motives, and the sweeping condemnation of their prudence and knowledge, and when the attack, on the other hand, is made by those who have acquired the standing and the authority of Seniors, and who are aware that they influence the opinions of the party in the country with which they are connected, the generous and high-minded feeling—the moderation, kindliness, and dignified

character, exhibited in such an attack, will, no doubt, be duly appreciated.

That attack, however, being now public,—an attempt having been made to intimidate and stigmatise the Counsel, who are employed against your political friend—and the merits of the action having been selected as the topic of inflammatory and laboured Parliamentary invective, the action may now, perhaps, be *resumed*, in the hope of deriving aid from your interference, and as if to furnish a practical illustration of the notions, which you entertain as to the impartial and fair administration of justice between man and man.

I have now, however, to inform you, that in representing ME as Counsel in that case, and in directing your reflections and insinuations against me in that character, you either have acted upon most false information,—(if you have received any information on the subject,)—or at least upon most insufficient and unwarrantable grounds. I *am not*, and never *was*, Counsel for Mr Alexander or the other defendant, in the action against them at Mr Stuart's instance. I drew no papers—I gave no advice or assistance, in that action: and *my only knowledge of its merits or details*, is that, which I have been obliged to acquire, in order to meet your wanton, illiberal, and extraordinary attack.

At the commencement of the action, I was applied to, in the view of being retained as Counsel for the defendants. Understanding that they had

the efficient and able assistance of Mr Forsyth and Mr M'Neill, I stated that circumstances of a personal nature rendered me desirous not to be employed or consulted in the case ;—and, though not entitled to withhold my professional assistance in any case of the sort, *I begged to be allowed not to act in this particular instance.* You are well aware, that if the party had insisted upon having my aid, there was no professional reason which I could with propriety have assigned, or on which I could have been entitled to decline the case. If I had anticipated the injustice which the defendant was to suffer from the discussion of his case in Parliament, or that an attempt was to be made to intimidate and deter his Counsel in the discharge of their duty, most assuredly I would not have allowed any personal consideration or feeling to prevent me from undertaking Mr Alexander's case, which I now regret that I declined.

Of the conduct, management, or particular merits of the case, I knew nothing until this day. It appears, that the clerk of the defendant's agent, not being able to find Mr M'Neill at the time when the paper in question was about to be lodged, had brought it to me to sign *for* Mr M'Neill. Every one acquainted with the rules and practice of the Scotch Courts, is perfectly aware, that Advocates are allowed, and are continually in use, to subscribe in this manner, pleadings for another, as it frequently happens, that the subscription of the



lawyer who draws the paper cannot be obtained before the time, or the particular hour, at which the paper must be lodged. Papers are accordingly subscribed every day by one Counsel *for* another—in the way in which, it appears, I had subscribed the paper in question—“For Mr D. M’Neill, “ John Hope,”—not even knowing the parties in the case. No responsibility for the contents of the paper is inferred or created by such signature. I state that as matter of universal understanding, and of daily practice. Indeed, the mode in which my name appeared in the paper in question, must have proved at once, to every person acquainted with the practice of the Scotch Courts, that I was not Counsel in the case.

Mr Stuart, I understand, was offended at the contents of that paper, and *personally* applied, *some time after the paper was lodged*, to the agent for the other party, to know if I was Counsel in the case, or whether I had merely subscribed the paper in the usual way for another Counsel. *Mr Stuart was informed that I was not Counsel, and that I knew nothing of the paper.*

It appears that those friends of Mr Stuart, who superintended the publication of the Report of Mr Stuart’s Trial, thought fit to publish, without explanation, both names appearing at the paper in question, though *these names were not read or mentioned at the trial.* That the names were so printed in this particular manner, *for the purpose*

of representing me, to persons ignorant of Scotch forms, as the Counsel in the case, and of affording the appearance of a pretext for intended political attack—the use actually made by you, immediately thereafter, of the mode in which that part of the Report is printed, leaves me little room to doubt. The anxiety manifested in that Report, to explain every other circumstance which might not be understood by persons, unacquainted with Scotch practice and forms, renders the printing of this formal subscription, without explanation, the more remarkable, when considered in connection with the use immediately made of it by you in Parliament. The report of the trial, which is of great length, was prepared also with a rapidity, which seems to show a desire to be in time for the motion made by you in Parliament. Understanding (erroneously) that the report had been revised by Mr Jeffrey and Mr Cockburn, (the leading Counsel in the case,) I took measures, on seeing the use to which this part of the Report had been turned, to inquire whether either of them had sanctioned or revised this part of it, communicating my opinion, that I had no doubt of the purpose, and that I considered it an *unfair* and *ungentlemanlike* proceeding. Both of these gentlemen frankly declared that they had not seen that part of the Report before publication, and disclaimed having authorized it.

The circumstance, that these names are printed in a way calculated to mislead, is the more remark-

able, that it cannot be defended on the ground of adhering *literatim* to the procedure on the trial, since part of that particular paper, read (as I am informed) at the trial, is not printed ;—and in the same manner, a very remarkable passage is omitted in one of the letters from Mr Stuart to Mr Gibson, and no appearance even of an omission is noticed, in the way in which the letter is published.

It is likewise a circumstance not a little remarkable, that this mode of representing and printing the signature at the Record, is different from the mode observed in practice, (I believe I may say invariably,) in printing the pleadings ; and it is known, that a great part of the pleadings in Scotch Courts are printed. Though it happens, perhaps in three cases out of ten, that the Record is subscribed in the way I have mentioned by one Counsel *for* the Counsel who drew the pleading, yet, the printed copies for the use of the Court, the parties, the Bar, and all concerned, uniformly bear merely the name of the Counsel who drew the pleading, and the printed copies never enable one to ascertain, whether the record has been subscribed by the Counsel who drew the pleading, or by another for him.

The use made by you of the line of defence thus ascribed to me in this action, in order to give a colour to the statement of the case of Borthwick, sufficiently shews the *importance attached to the attempt to represent ME* as one of the Counsel em-



ployed against Mr Stuart in the private action already mentioned. The whole of your speech proves the copious and artful information which you had received from Scotland ; and the circumstance to which I have now adverted, coupled with the serious use immediately made by you, of that circumstance, in Parliament, is a coincidence which it requires some charity to ascribe to chance.

If, on the simple fact, that you saw in the Report of Mr Stuart's trial, the words, " For Mr D. " M'Neill, John Hope," you, and Sir James Mackintosh, have *assumed* that I was Counsel in the case, and without further information or inquiry, have thought proper, on this ground, to include me in your invective : then you will allow me to say, that the ignorance you have betrayed of the rules and practice of Scotch Courts, proves how admirably qualified you are to comment on the professional conduct of Scotch Counsel. I must further desire you to consider the impropriety and injustice of making an attack in Parliament on the conduct of private gentlemen, without even taking the trouble to ascertain whether there was the slightest ground for the attack.

I must likewise observe, that the words, " For " Mr D. M'Neill, John Hope," seem of themselves to signify, *to any professional person*, though not connected with the Scotch Bar, that I had not subscribed the paper on my own account, or as a production of my own, for which I was at

all responsible. At least, the words are, I think, of that description, that any person of *professional* habits, influenced by a due consideration for the character of others, and not actuated by a desire to make the attack for a particular purpose, would have hesitated before he ventured, upon such grounds, to utter a violent invective on the legal character, the professional judgment, and even the motives, of a gentleman of the Bar.

The duty peculiarly incumbent on those, who know that, in the exercise of the right of Parliamentary discussion, they are invested with high and unquestionable impunities; and the duty which high-minded men must, in that situation, feel particularly solicitous to perform, is to examine most strictly the grounds on which they accuse, and to proceed with caution, temper, and forbearance in promulgating, with the privileges and authority of that situation, statements which involve the characters of others. Whether *You* have attended to that duty on the present occasion, let the gentlemen of England decide.

If, on the other hand, you have been induced, by information from Scotland, to believe that I acted as Counsel against Mr Stuart, I can only ascribe the statements made to you to *intentional misrepresentation*. Every person connected with the case knew perfectly well that I was not Counsel. But I feel some desire to know both the nature of such information, if you received any, and

the source from which it came. In estimating the propriety of your motives, the apparent respectability of the quarter from which you received your information, may be important. After the communication made to Mr Stuart on this very subject, and when no man connected with Scotch law practice, in any department, however inferior, could possibly misunderstand the origin of my subscription to the paper in question, I cannot but entertain a strong desire to know, from what quarter you received information, and the authority of what description of persons you considered to be sufficient, to entitle you to make such an attack on a gentleman, in the same situation, certainly, in society with yourself.

I will not insult my friend Mr M'Neill, by saying one word in order to shew that he was entitled, on the part of his clients, to maintain that they were ready to prove the truth of the alleged slander. In fact, Mr M'Neill was not the real object of attack in the allusion to this paper. And an attack upon *him* on this ground *would not have answered the purpose in view*. The connection between this action by Mr Stuart and the case of Borthwick, on which it was your purpose to insist, in order to give a colour to your charge respecting the latter case, would have been entirely lost, if *Mr M'Neill alone had been represented as responsible for the conduct of the defence against Mr Stuart's action*. It was well known



that he had taken no charge, and given no advice in regard to the criminal prosecution against Borthwick, *at the instance of his Majesty's Advocate*, though he was employed as Counsel, when the case was taken up by the private party.—Indeed, knowing that he had been engaged *previously* as Counsel in the private disputes between Mr Alexander and Borthwick, and that he was Counsel for Alexander in several actions, in which that person was concerned, I purposely avoided mentioning the case of Borthwick to him, on any one occasion.—The case had likewise occurred within the circuit district on which it was then my turn to act, which naturally devolved the consideration of it on me, when the private party applied in the usual way to the Crown to prosecute, as is done in every case, which is thought fit for trial.—As the Senior Advocate-Depute, it was also my duty, in the absence of the Lord Advocate and Solicitor-General, to incur any responsibility attaching to the case.

The foundation of your charge of oppression and malicious prosecution, in the case of Borthwick, seems to rest on the feeling and temper against Mr Stuart, which you alleged to be manifested by the pleading, to which I have already adverted. But in order to give that colour to the proceedings in Borthwick's case, it was absolutely necessary to represent *me* as Counsel against Mr Stuart in the private action, since Mr M'Neill is in no degree

more responsible for the proceedings against Borthwick, at the instance of the Lord Advocate, than any other gentleman at the Bar. Disconnect him, on the one hand, from that case, and me, on the other hand, from the action of damages at Mr Stuart's instance ; and then, there no longer exists the least foundation for imputing to me those motives to which the proceedings against Borthwick are ascribed. I never read the paper which you have so particularly ascribed to me, until I begged Mr M'Neill to-day to get a copy of it for me. On the other hand, all the Crown Counsel are perfectly aware, that Mr M'Neill was never once consulted or referred to by me in any one step regarding Borthwick. And if I am correct in my recollection, I stated in a letter to the Lord Advocate, soon after I instituted proceedings against Borthwick, that I had not consulted Mr M'Neill, and did not intend to consult him in regard to the case, either of Borthwick or of Mr Stuart. Of the latter case, he had no official knowledge or information whatever, until, owing to my indisposition, it became necessary for him to draw the indictment.

Upon what grounds you and Sir James Mackintosh have proceeded, in the attack which you have severally made upon me, for supposed conduct, as a counsel in a private and depending action, I have no means of exactly ascertaining. It is very possible that the wilful misrepresentation of others may have induced you *to think yourself safe* in

the grounds of that attack. But (whatever was the nature of your information)—that the circumstances in question have been anxiously, or at least hastily, and therefore unwarrantably seized hold of, for the purpose of imputing my official conduct to flagitious motives, cannot be denied. Whether you truly believed the statements which you were so forward and ready to make, is a question I cannot permit myself to ask. The injustice, illiberality, and intemperance of the comments, with which these statements were accompanied, you cannot now dispute.

Having attacked me upon this ground, it then appears, that you proceeded to accuse me of having acted, in my situation of Advocate-depute, from the influence of the same feelings to which you chose to ascribe the line of defence maintained against Mr Stuart, in the case I have already mentioned, and of having raised a prosecution against Borthwick, and of having insisted in his imprisonment, when *I could not sincerely believe that there were grounds for a trial, or entertain any intention of insisting in the charge against him.* And the *motive* to which this charge of oppression is directly imputed, is the desire to keep up a prejudice against Mr Stuart, by maintaining, *until after Mr Stuart's trial*, the appearance of a prosecution against Borthwick, in which there was no intention seriously to insist.

To that charge, I have to make a very short but



decisive answer. The Lord Advocate can inform you, that, from the moment I instituted proceedings, at the instance of the Public Prosecutor, against Borthwick, I URGED MY OWN OPINION IN THE STRONGEST AND MOST EARNEST TERMS, THAT THE CHARGE AGAINST BORTHWICK SHOULD GO TO A JURY, AT THE CIRCUIT AT GLASGOW, IN APRIL LAST, BEFORE MR STUART WAS INDICTED—in terms stronger, perhaps, than I was entitled to use, in offering any advice to his Lordship. And it is known to several of my friends, that I expressed much dissatisfaction at the delay and abandonment of that case, in consequence of instructions from the Lord Advocate. The earnestness with which I pressed my opinion, that Borthwick ought to be tried at the Spring Circuit, at Glasgow, so as to have the trial over *before Mr Stuart was indicted*, is a sufficient proof of the sincerity of my wish and intention to bring Borthwick before a jury, and that I was not actuated by the desire to maintain the appearance of a charge against Borthwick, until after Mr Stuart's trial. Indeed, so strongly impressed was I with the propriety, the expediency, and the necessity for the ends of public justice, that Borthwick should be tried at the ensuing Circuit at Glasgow, before an indictment was raised against Mr Stuart, that I at once indicted Borthwick, without communication with the Lord Advocate, (then in London,) and as the dates of the application at the instance of the Lord

Advocate for his apprehension, and of the circuit, will shew I made great exertions to complete the preparation of his indictment (which the number of productions, partly lying in Glasgow, and partly in Edinburgh, but all specially described in the indictment, rendered very troublesome) in time for the Glasgow Circuit, (April 19th,)—fifteen free days for service of the indictment being necessary.

I feel the less delicacy in stating, for my own vindication, against the imputation of insincerity and malice in this prosecution, the difference of opinion between the Lord Advocate and myself respecting this particular case, since that statement completely and necessarily relieves his Lordship from responsibility, which, by no possible inference, can fairly attach to him. He is in no respect actually, or even constructively, responsible for the proceedings instituted against Borthwick. *He* suspended for the purpose of further consideration, and *finally abandoned* the prosecution which *I* instituted. It does therefore seem to be highly unreasonable, to make him responsible for proceedings which *I* commenced, and which *He* interfered in only to stop. On the other hand, the facts of the case, and the earnestness with which I urged my own opinion to my Lord Advocate, afford real evidence, that, whether right or wrong in my notion of the case of Borthwick, I was at least perfectly sincere in my conviction, that he ought to

be tried, and in my wish to bring him before a jury. \*

Whatever responsibility is to arise from the case of Borthwick, therefore, can attach *only to myself*,

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\* So false and injurious is the attempt to ascribe my opinion in regard to the case of Borthwick to any feelings created by the fatal and unfortunate event at Auchtertool on the 26th of March, that it appears from the Crown Agent's papers, (a circumstance which had escaped my own recollection,) that on the 17th of March an application was made on the part of the Procurator-fiscal of the county of Edinburgh, stating, that the private party, Alexander, had applied to him to concur and assist in the precognition, of which it became necessary to take part in Edinburgh for the recovery of some of the articles taken from the Sentinel Office,—transmitting the precognition, in so far as it had been taken at Glasgow, and requesting the opinion and advice of the Crown Counsel on the points, whether the case was one in which that assistance ought to be given,—whether the case ought to proceed at the instance of the private party alone, or what course the Procurator-fiscal ought to follow.

On the 18th of March, eight days BEFORE *the event* at Auchtertool, it appears that I returned an opinion to the Crown Agent, for the direction of the Procurator-fiscal, in which, after stating my opinion of the case, I added, "THIS IS A CHARGE, WHICH, IF THE PRIVATE PARTY APPLIES, MUST BE TAKEN UP AT THE PUBLIC INSTANCE." The precognition was continued and nearly completed by the private party, who did, on the 29th of March, apply to the Crown to prosecute, transmitting the whole precognition; and in pursuance of the opinion I had originally formed, which the additional investigation only tended to confirm, I gave directions to the Crown Agent to proceed in the case at the instance of his Majesty's Advocate.



and I am as little inclined to shrink from that responsibility, as I am to recede from my opinion that THAT PERSON, IN THE WHOLE CIRCUMSTANCES OF HIS CASE, OUGHT TO HAVE BEEN BROUGHT BEFORE A JURY OF HIS COUNTRY.

The grounds of that opinion I shall be prepared, and shall be most ready to state when the proper occasion arrives. I am not at all afraid of meeting you either on the question as to the *legal criminality of the acts charged*, or on the question of the individual's guilt or innocence, according to the precognition laid before me, or of the expediency of prosecution in the circumstances of the case at the instance of the Lord Advocate. These are matters, however, which you promise to agitate in Parliament—the discussion of which I feel no desire to anticipate, and have no reason to dread. I do not, therefore, mean now to enter into the question whether I am right or wrong in point of law or of expediency in the view I formed of that case. I presume that your Parliamentary impeachment is not intended to be grounded merely on *error* in point of law or of expediency. You are bound to adhere to your charge of malicious and wanton oppression, or to retract that charge more honourably and candidly than it was made. You may be assured, that throughout the inquiry, of which you propose to make me the object, I shall not lose sight of the manner in which your charges were brought forward—and of the

direct imputation of malicious motives to which my conduct was ascribed ; and you may perhaps find, in the result of this inquiry, that you will have some reason to regret the precipitation with which you have become the instrument of an attack, prepared and got up for you, I believe, by others.

On the 4th of May, not many days after the Glasgow Circuit terminated, Mr Alexander intimated to the Crown Agent his intention to prosecute Borthwick at his own instance, as private prosecutor. From that time the prosecution against Borthwick was at the instance of the private party alone, and was no longer under the control, direction, or management of the Public Prosecutor.

On the other matters of accusation stated by you, in regard to the treatment of that individual, I shall only say, that I distinctly deny the truth of all the statements you have made respecting the severity and illegality of his apprehension and subsequent treatment, and I am ready to shew, that nothing was done contrary to law or justice. If that individual has wrongs to complain of, he cannot fail to obtain redress in a Court of Law.

In the meantime, I cannot but admire the great liberality displayed in introducing charges of such a serious and grave character, directed equally against the Lord Advocate and myself, *without any previous communication of your intention*, and without allowing the Lord Advocate an opportunity of obtaining the information necessary to vindicate

me against the imputation of having acted oppressively, from the base and unworthy motives, which you have presumed to ascribe to me. I understand that you have *subsequently* moved for papers, with a view to inquire into the case of Borthwick. Having already, without any notice, attacked and condemned my conduct in regard to that case, in the most unqualified terms, and having roundly and broadly ascribed my conduct to the very worst motives, when there was neither time nor opportunity for defence, it certainly appears an appropriate and fit course of procedure, to *conclude* by moving for inquiry—a measure which sufficiently marks your own consciousness of the unfairness of your previous attack without inquiry.

The course which you have followed, of impeachment without notice, has been attended with this obvious and most unjust result—that the preliminary stages of Parliamentary discussion, by which public impression is mainly created, have passed against me, without the possibility of explanation or defence. Whether that is the usual course of Parliamentary procedure, in an accusation against a Law Officer of the Crown, cannot be unknown to you. The usual courtesy and candour observed in Parliament, of intimating the object of intended motions to the friends of those whose conduct is to be questioned, have been also, in my case, entirely neglected. To what circumstances I am to attri-



bute this deliberate departure, both from the usage and courtesy of Parliament, I am yet to learn.

If, however, it shall appear, that the subsequent stages of this public impeachment are not pressed forward with equal earnestness and urgency, I must be allowed to doubt, whether the manner in which the accusation has been commenced, has been regulated by a due regard to the ends of substantial justice.

I remain,

SIR,

Your obedient servant,

JOHN HOPE.

EDINBURGH, 77, *Queen Street*, }  
*July 1, 1822.* }



A

## LETTER

TO

JOHN HOPE, ESQ.

ADVOCATE,

CONTAINING

STRICTURES ON HIS LETTER

TO THE HONOURABLE

JAMES ABERCROMBY, M. P.

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"The People are abused——This palt'ring  
Becomes not *Britain*——."

SHAKSPEARE.

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EDINBURGH:

PUBLISHED BY JAMES L. HUIE;

AND

G. &amp; W. B. WHITTAKER, LONDON.

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1822.





TO

JOHN HOPE, Esq.

SIR,

ON reading your Letter, addressed to the Honourable James Abercromby, M. P. in justification (as I supposed) of the part you have acted in the late events which have agitated the political world, I had anticipated a full and complete refutation of the charges which that honourable gentleman, in his public capacity, as a representative of the people, thought his duty to bring before Parliament,—instead of which I find nothing in that Letter but a long tirade against that honourable gentleman, and those who supported him in his motion for a Committee of Inquiry into the conduct of the Lord Advocate, and the other law officers of the Crown in Scotland, with relation to the public press ; but more especially to inquire into the prosecution carried on against W. M. Borthwick.

In the first place, you commence by mentioning an affair in which Mr. Stuart of Dunearn and Mr. Duncan Stevenson had a quarrel in the Parliament Square, which ended in the latter party being horsewhipped, and which the Glasgow Sentinel took up, *it is said, in slanderous terms*, (as you express it.) Now, I put it to any person who has read your Letter, or the paragraph of the Sentinel which you have been kind enough to quote, if it is not slanderous and unbecoming any gentleman to write, (if, indeed, it was wrote by a gentleman, of which I have my doubts.) You allege that the statements are true, and can be proved. This you, as a lawyer, must know is no extenuation of a libel; and for justification of such language, no court of law would ever hold it as such.

You then allude to that pillar of the constitution, Sir James Mackintosh, in a very unceremonious and unbecoming way for so young a man, not at all warranted by the facts of the case. A more temperate, eloquent, and argumentative speech, than that of the honourable gentleman, can hardly be conceived. The only part of which you can complain, (if, indeed, you have any reason,) is imputing to you a "furious zeal" in the cause you had espoused: any one who takes the trouble to read Mr. Borthwick's able pamphlet will not accuse you of treating that gentleman in the tenderest manner.

You also accuse Mr. Abercromby of treating you unhandsomely in bringing before Parliament



your conduct, where you could not defend yourself : but there was the Lord Advocate, and many other friends, (and I believe relations,) who, if they chose, might have defended you, if you neglected to instruct them ; for you must have been well aware that it would be impossible to bring forward the business of Mr. Borthwick without mentioning your name, and that in a way which would require defence, and a defence of no ordinary nature. Here blame can be attached to no one but yourself.

You accuse them of an attack upon the rights and privileges of the bar ; and here I am at a loss to discover where that attack is to be found. I have read over the speeches carefully, and I am confident no such thing exists, except, perhaps, in your imagination. You deny that subscription to a bond to establish a newspaper make the parties liable for what appears in it. Here we are at issue ; and I think every person who reads the admirable reasoning in which Mr. Abercromby introduces this subject in his speech, must at once see the fallacy of such reasoning, and exclaim, with Richard,

“ 'Tis a weak invention of the enemy.”

As this subject, however, is to be decided by a court of justice, it would be wrong in me to carry it any farther :—a very few months will decide the question.

You next accuse Mr. Abercromby of prejudging the case of a gentleman, whom you style a friend

to the "noble family of Hamilton," and roundly impute motives to that honourable gentleman which, you must be conscious, he never deserved, and which ill becomes you, considering the handsome manner in which he brought your case before Parliament, and the lenient treatment you experienced at his hands, keeping in mind how much he had in his power. You call upon the Bar of England to unite with that of Scotland in reprobating such conduct in any of its members. You talk of the violent spirit of party; but you seem to forget that you are a party man yourself, and that YOU SUBSCRIBED A BOND TO UPHOLD A PARTY—a party not characterized by any delicate feelings towards those who may happen to differ from them in politics—a party upheld by a long system of personal malignity and deadly abuse, which, in two cases of late occurrence, has deprived society of two valuable individuals.

The next tirade you make is a general attack on the gentlemen of the Bar in England, who have the honour of seats in the House of Commons; to them you have imputed motives of the basest kind, and in language not the politest or the most consistent: at the same time you are railing against their language—telling them they are availing themselves of privileges which you do not possess, to attack your character, to misrepresent your motives, and to twist your actions to suit their purposes. Such language, Sir, cannot be sufficiently reprobated, and is unpardonable in a gentleman a lawyer by profession; it is, in fact, a breach of the privi-

leges of the House of Commons. Your *moderation, kindness, and dignified character*, will certainly shine here in a very conspicuous manner: it will, no doubt, redound much to your honour.

Next comes a laboured paragraph or two to tell us you were not counsel for the defendants in Alexander's case, and that you *begged to be allowed not to act in this particular instance*. It is a great pity you had not shown equal delicacy in handling the subject matter of your Letter. Your very frequent allusions to the case of Mr. Stuart is unfeeling; and had you kept that case out of your Letter altogether, or alluded to it but slightly, it would have shown you had no wish to harrow the feelings of that respected individual: but no,—that would not answer,—that would be an act of courtesy which an opponent in the political world cannot now expect;—those days are past when no bad motives were imputed to men for doing a public duty, merely because they differed in political principles.

You regret having declined acting as counsel for Alexander; but allow me to tell you, in that case you acted wisely, if you never did so before in your life. What explanation can be required about signing your name with Mr. M'Niell's in the report of the trial of Mr. Stuart, published by that gentleman's friends, I am at a loss to conceive. You complain of the rapidity with which that trial was got up, and, I think, with little reason. You insinuate; nay, you assert, that it was done in order to give Mr. Abercromby information relative to his motion.



That I maintain is not the case; that honourable gentleman could be at little loss for information on a subject which was so well known, and which Mr. Borthwick's pamphlet so ably supplies.

You represent Mr. Abercromby as having adopted a line of defence ascribed to you, assuming that you were counsel in this action, and broadly assert, that his information was artful, and that it required some *charity* to ascribe these circumstances to chance. Such language, Sir, is certainly very strong; your motives for using it can be only known to yourself. If Mr. Abercromby assumed you were counsel, in consequence of seeing your name signed "For D. M'Niell, John Hope," I cannot see how he is to blame. I am not acquainted with the practices of the courts of law; it may be, (and I believe it is the case,) that counsel in England sign no paper without being held responsible for its contents, and without having an interest in it: if a similar practice does not prevail here, it is an abuse which should be immediately remedied: For a man to sign a document, the contents of which he is ignorant, I maintain is highly blameable. Who is responsible, if this paper should contain any thing which is wrong? It therefore follows that these honourable gentlemen had sufficient grounds for assuming you as counsel in the case. If Mr. M'Niell drew out the paper, if he alone was counsel, he alone should have signed it.

You take upon you to lecture Mr. Abercromby on the rights and privileges of Parliamentary discussion. Here you must acknowledge you have committed yourself most egregiously. What right you possess to lecture a member of Parliament on his high and important duties, I have yet to learn. You have directly accused him of having introduced the motion in which you are concerned, in an unbecoming manner, telling him he is invested with high and *unquestionable impunities*. You then refer it to the gentlemen of England. Whoever reads Mr. Abercromby's speech, and your letter, will be at little loss to discover which displays the most tender concern for the feelings of all who have been concerned in this affair. Your next attack upon that gentleman is most unaccountable. You tell him in plain terms, in terms which cannot be misunderstood, that you can only ascribe his statements to *intentional misrepresentation*. You say you possess a strong desire to know the *apparent* respectability of the quarter from which he received his information, you tell him, you are a gentleman, moving in the same circle with himself; you certainly must have had strong reasons to impute such motives to a gentleman of such high and unblemished character—a gentleman characterized for his moderation, to whom both sides of the House look with respect. Perhaps you owe him a grudge for the part he has taken with regard to the Police Bill of this city, the success of which is mainly to be attributed to his skill

and judgment, for which, every citizen of Edinburgh, (*the close system alone excepted,*) have returned him their sincere and hearty thanks. You are one of the advocates for this system of mis-government; it is but natural, if you cannot vent your spleen in argument, you will do so in high-sounding words, and in personal invective. Whether he has misrepresented or coloured his statements, the Committee of the House of Commons will soon decide.

You say you will not insult your friend Mr. McNeill, "by saying one word in order to show he "was entitled, on the part of his client, to maintain "that they were ready to prove the truth of the alleged slander." You allege that he was not the real object of attack, in allusion to this paper; that it was intended for you; you were the person aggrieved. Allow me to inform you, Sir, as a public character, as counsel under the Lord Advocate, you have a right to be brought before the bar of public opinion; and, as long as a free press exists, you, and every person in authority, must bow with submission to that bar from which even kings are not exempt.

What your motives were in the treatment Mr. Borthwick experienced, when under your care, is best known to yourself; but charity constrains me to believe it was a sense of public duty: you should therefore have shown the same charity to those honourable gentlemen who thought it their public duty to bring your conduct before the House of Commons.



You say you urged your opinion in opposition to that of the Lord Advocate, that Mr. Borthwick's case should go to a Jury. It would have seemed quite as well to have kept that opinion to yourself; at least, not to have published it to the world. Youngmen are often hazardous in giving opinions, which, in their maturer years, they would not have done. Whether you or the Lord Advocate were most competent to judge in this case, I leave the public to determine. You say you feel delicacy in stating this difference of opinion between you and the Lord Advocate. Had you shown equal delicacy in writing your letter; had you shown equal delicacy throughout the whole of the affairs in which you have been engaged, relative to the public press, your name never would have been mentioned in the House of Commons in this unpleasant matter. You say you are willing to bear the whole responsibility; that blame can be attached to no one but you, if you were wrong in treating Mr. Borthwick in the manner you have done; in dragging that individual as a common felon, in *chains*, to prison; in bringing him forward for trial; in refusing to try him; in re-committing him; refusing bail; denying his friends access to him; and, after all this, discharging him without trial, telling him to seek his remedy at law; still you have the confidence to assert that this injured man should have been tried for stealing his *own papers*, out of his *own private desk*. The grounds of that opinion, you assert, you are ready to state; and I have no

doubt, the public long to be put in possession of those opinions : they must contain something very convincing, very satisfactory, that you place such confidence in them. I am, however, much afraid, when the time comes, you will follow the example of your superiors, and shelter yourself under the wings of office—a sure haven for all shipwrecked politicians, as long as the minister can command majorities in the House of Commons. Believe me, Sir, these times will not last for ever; the time will come, when public men will listen to public opinion. I should be happy to learn what course *you* would have followed had you been in the Lord Advocate's place? Would you have opposed a committee of inquiry into your conduct, after such convincing arguments brought forward by the supporters of that motion, and which was lost only by a majority of *twenty-five* in a House consisting of 215 members? You will assert Mr. Abercromby made out no case to merit inquiry. Did he not offer to prove, by evidence, unquestionable evidence, every word he had uttered, every proposition he had advanced? Did not my Lord Londonderry himself acknowledge, in part, the justice of his reasoning? Did not Mr. Peel do the same? Did they not say it would have been *more discreet in the Learned Lord* (and, of course, his deputies) *to have kept himself distinct from those transactions, and not to have raised any question with regard to his conduct?* So much for the

opinions of the first ministers of the Crown, and yet inquiry was negatived. *O tempora, O mores!*

You tell Mr. Borthwick, a ruined man, to seek his remedy at law, against Alexander, or you, if he pleases. You well know, that from Alexander, (a bankrupt,) he can recover nothing, and to go to law with his Majesty's Advocate, would be madness—would be only heaping fuel on the fire. The House of Commons alone, can grant him redress. If I am not greatly mistaken, Mr. Abercromby will prove such a case as will set your conduct throughout this affair in its proper light, and enable the House of Commons to do substantial justice to Mr. Borthwick.'

You complain of the injustice done you, in not giving you notice of your impeachment, (as you term it.) And here I would ask, what right you have to ask what is denied to every other subject? Do you suppose that Members of Parliament should worship at your shrine?—should consult you, whether it would or would not be agreeable to your feelings to have your conduct canvassed? Had you been a Member of Parliament, and received no notice, you might have had some reason to complain. YOUR CASE IS NOT SO BAD AS MR. BORTHWICK'S, WHERE YOU DENIED HIM THE ADVICE AND ASSISTANCE OF HIS FRIENDS, AND NOW COME FORWARD WITH AN UNBLUSHING FRONT, AND ASK THAT WHICH YOU DENIED TO OTHERS.



You assert, “ that the preliminary stages of parliamentary discussion, by which public impression is mainly created, have gone against you.” To obviate this, have we not your letter, in vindication of your character ; or, to speak more properly, in aggravation. The spirit which that letter breathes, be assured, Sir, will create more unfavourable opinions than any speeches which have been delivered against you in Parliament.

You hope that the other stages of this “ public impeachment may be pressed with equal earnestness and urgency.” Of that, allow me to tell you, you can have little doubt Mr. Abercromby possesses plenty of materials for prosecuting his inquiries ; and rest satisfied, Sir, that it will not be his fault, if every transaction relative to this affair is not sifted to the bottom,—if every person connected with it, is not held up in his proper character, and those who have been in fault, held up to the “ unalloyed opprobrium of mankind.”

I had now nearly done with you, Sir, but I have just seen a second edition of your letter, in which all your former opinions are repeated. In a note you are cruel enough to drag the unfortunate affair of Auchtertool again before the public. I should have thought, Sir, that your very frequent allusions to that case, in the first edition of your letter, would have satisfied you,—that a few days reflection would have shown you the injustice of lacerating the feelings of the parties concerned in that affair.

These fine feelings, Sir, however, you seem not to possess ; if you do, the spirit of party has so obliterated them, to have steeled your mind, and prevented you from following the dictates of your more reasonable moments ; which, in other cases, where party is not concerned, you might have felt inclined to do. Your noticing this case is doubly unpardonable ; you, who are an interested individual—you, who advanced money, (at least signed a bond, which is the same thing ; ) to you alone, and the parties who signed along with you, must all the blame of the political rancour and hostility of the present day be ascribed. You fed the flame ; you heaped fuel on the burning fabric ; you kept alive the dying spirit of personal malignity, by the establishment and support of a newspaper, whose very principles are death to the constitution of our country, consequently, death to the liberties of the subject ; which, had it continued, would have eradicated every tender feeling from our hearts. It was not in the nature of things, Sir, that such a system could continue ; they must have had an end ; their end has been complete ; they have been nipped in the bud, and buried their supporters with everlasting shame. Such will be the end of every unconstitutional print. Men of enlightened and liberal minds will not read them ; they will perish like an assassin ; they will work their own ruin by the very means they sought to ruin others.

I do not stop to notice two prints, one in Edin-

burgh, the other in Glasgow ; one in the shape of a monthly magazine, the other a weekly newspaper—receptacles for every species of abuse, sinks to carry off every kind of pollution which the unconstitutional party can think of, kinds of gormandizing monsters, ready to swallow every species of filth which their voracious stomachs can digest. Be the subject what it may, they receive, garnish, and adorn their pages with it. These prints, however, are not worthy farther notice. I understand they will die very shortly ; they are undoubtedly in a deep decline ; if their disease do not terminate speedily, I should not be the least surprised to hear that they had blown out their brains, and were duly interred in some cross road contiguous to their respective places of abode. I am almost sorry I have mentioned them ; they are hardly worth the paper used in writing about them. As you are, Sir, one of the supporters of this system, it is right that you should be told what they are, lest you make the same excuse as the Lord Advocate, and say you do not read them. By the way, this is a new kind of excuse for a man to support a party paper, and when that paper is proved to have contained libels, to get himself off in that way. This shuffling will not do. If I am not greatly mistaken your pocket has already paid for some of these libels ; you will likely have more, before you get out of the scrape. It will, however, be a lesson to you hereafter, that there is nothing like



a man paying for his follies, public men, more especially public functionaries, should keep themselves aloof from party politics, and newspaper squabbles.

Having now examined your letter in detail, as briefly as possible, allow me to offer a few observations on its general character.—It appears to be a production got up in the hurry of the moment—a production written under the influence of strong passions, reckless of consequences. You appear to have read Mr. Abercromby's speech, hurried to your writing table, without taking time, without taking into consideration any palliating circumstances, conveyed your confused and irritated opinions to paper, and, without farther revisal, ushered them into the world. I judge this from the general tone of the Letter, its want of argument, its intemperance, the severe and unbecoming language in which many of its statements are couched, and the sweeping declarations it contains. You have advanced propositions which the facts of the case do not justify, and which, as you had advanced, you were bound to prove. You have answered minor points, while the more serious parts of the charges against you are left unanswered. All that you say about these charges, although I supposed your Letter was written with a view of refuting them, is, that when the proper time arrives, you will be ready to meet these accusations. You say you are not afraid to meet Mr. Abercromby, “either on the question as to the legal crimi-

nality of the acts charged, or on the question of the individual's guilt or innocence." I trust it may be so for your own sake ; but I should have thought, when you were determined to write your letter, that would have been the proper time to answer the heavy charges brought against you by Mr. Borthwick, charges which are partly supported by documentary evidence, and which, from the general view of the case, would lead the public to suppose you had treated Mr. Borthwick with uncalled-for and unheard-of severity.

You will probably answer to this accusation, that you ordered him to be treated with no farther restraint than any other prisoner who is committed for the same crime. If you were not aware, you should have been, that there were many palliating circumstances in his case. You had the warrant of the Magistrates of Glasgow, which justified him in taking possession of his property in the manner he did—coupled with that, you would see from this same warrant, that Alexander had neglected to fulfil his part of the contract. It of necessity follows that Mr. Borthwick took the course which any other person would have done placed in a similar situation. Yet for this high crime and misdemeanour, one of the lieges is to be immured in a prison—debarred the advice and assistance of his professional advisers—kept there for SEVENTY DAYS—discharged at the end of that time without trial—with a stigma placed on his character

—with his prospects in life probably ruined—turned adrift on the world, with a foul imputation hanging over his character, and at last discharged without having an opportunity of proving his innocence. Heavier charges than these can hardly be brought against any public man—charges which you must disprove, or justify yourself for having committed, which justification must be complete and satisfactory to the public mind, in order that they may place your character on the same good footing it had stood before these unfortunate circumstances took place.

You will probably answer, Why all this noise about Mr. Borthwick—many men have undergone greater hardships, and never complained? You will, I hope, when convinced you were mistaken as to that individual's guilt, make him every reparation in your power. This may satisfy the public in this case, but what security have we that others of the lieges may not be treated in the same manner—may not be cast into dungeons, detained there for SEVENTY DAYS, and discharged without trial, telling them, go seek your remedy in a court of law.—Against whom?—against his Majesty's Advocate? You might as well go to Rome and fight against the Pope, or try to drive sense and liberal notions into the heads of the Continental despots; or, what is worse than both, make the *legitimate* members of our Town Council men of independent principles.

If such a state of things were allowed to exist



the country would soon be in a state of anarchy and confusion. Parliament alone, is the grand tribunal for granting redress to the meanest subject, as well as to the greatest; whose jurisdiction extends from one end of the empire to the other, whose power can control even kings, and whose orders must be obeyed by the highest authorities in the kingdom.—There the poor man can send his humble petition, without waiting on the vacillating and uncertain forms which abound in our courts of law—without ruining himself by incurring expenses which set justice at defiance, which give the rich man such an advantage over the poor, which can delay law-suits for years, and ultimately frustrate the ends of justice. You may probably tell him he should have waited till the actions pending before the Courts here (of which you are so fond of mentioning, and of which eleven-twelfths of the inhabitants of Edinburgh never heard of,) were settled. That may never be, or, at least, last such a time as would prevent Mr. Borthwick getting a hearing in Parliament. He would have been told, “why did you not come forward, Sir, immediately on your being liberated from jail, when the circumstances of the case were fresh in the recollection of the parties, when you might have had substantial justice done you, by the punishment of the parties who have injured you. It is now too late. I cannot take upon me to present your petition; you must bear with it.” Such had been the answer Mr. Borthwick would

have received from a Member of Parliament, had he requested him to present his petition after a lapse of time. God only knows, how many innocent persons might suffer in the same manner. I need hardly remark, Sir, that you would have adopted the same reasoning which I have done. You would have told Mr. Borthwick, (had he delayed his case,) he should have brought forward his complaint at the proper season. You would have exculpated yourself by the very delay you recommend to him.

I trust I have said enough to convince you, Sir, of the necessity of changing the erroneous and dangerous opinions you seem to possess relative to this business. Of that I am afraid there can be little hopes, while these opinions are so connected with party, and while you continue to mix with the "furious supporters" of the unconstitutional system. Their opinions are become a kind of second nature to you—a millstone round your neck, which will require some great effort to shake off.

Having now nearly finished with you for the present, Sir,—having commented and offered a few observations on your intemperate Letter, (not to call it by a harsher name,) perhaps not in the ablest manner, but with a sincere conviction of the truth of what I write, I have done so, I trust, in as lenient and as temperate a manner as possible, considering the many circumstances of the case. Your personal and private feelings it is not my intention to wound. You may be an

amiable young man in private life, (and I have every reason to believe you are so.) I am, however, constrained to say, your public conduct has not shown that you possess that prudence and discretion so necessary for a person invested with such high legal powers.

I should not have taken upon me, Sir, to answer your Letter, had I not been convinced Mr. Abercromby would take no notice of it ; unless, indeed, some of his friends have the charity to give you an opportunity, at the bar of the House of Commons, of apologizing to him for your unwarrantable attack on his high and unblemished character. If called to the bar of that House, you will have an opportunity, at the same time, of retracting the base insinuations you have thrown out in your Letter against other honourable gentlemen who have seats in that House.

I shall now take my leave of you, Sir. It may be unnecessary again to mention, that I mean nothing personal to you, or any other person mentioned in this Letter. *Do you get the Scotsman on Saturday? I always do ; and if you do not, you should, as it would be of consequence to you. He has a capital article on the Advocate Depute to-day."*

I remain,

SIR,

Your most obedient servant,

LUCIUS.

EDINBURGH, 6th July, 1822.



P. S.—I have this moment noticed a long correspondence between you and Mr. WILLIAM BENNET, W. S. the gentleman who reported Mr. Stuart's trial. I beg leave to quote a few passages from that Letter, as it appears in the *Courant* of this day, (8th July.) I should have quoted part of your answer also, but as you prohibit that most peremptorily, and as your Letter is too long for insertion, I shall not disobey your injunction.

“ Now, in the *first* place, I pointedly deny, that the *manner* of printing the signature to the answers for Alexander and Borthwick to Mr. Stuart's condescendence, was adopted “ *for the purpose* of representing you, to persons ignorant of Scotch forms, as the counsel in the case, and of affording the appearance of a pretext for intended political attack.” If you will look again at the Report itself, you will find, that it affords no grounds for such a statement.—You will there see, both in the *introductory* documents and in the *appendix*, that the signatures are all affixed *without explanation*, (which it certainly would have been very improper in me, as a reporter, to have presumed to give,) but all of these signatures are *necessary*, in my opinion, in order to give that degree of accuracy and authenticity, which I conceive essential to such a publication. It must be evident, that had I adopted the course pointed at by you, of affixing to the extract from the answers to the condescendence in Borthwick's case, the signature of Mr. DUNCAN M'NEILL, as the *signature actually annexed to that paper*, I would have been guilty of a misrepresentation and misstatement of the record of Court, which, in a reporter of a public trial, would have been highly reprehensible. It is true, the report was not revised by Mr. Jeffrey or by Mr. Cockburn, yet these gentlemen respectively revised the proof sheets of their speeches; and though in the speech of Mr. Cockburn, reference is made to the extract from the answers for Robert Alexander, &c. as in the appendix, yet that part of the appendix never was submitted to the revision of Mr. Cockburn, but was inserted by me, as it stands in the Report. If, therefore, Mr. Cockburn declared to you that he had not revised that part of the Report, he only stated to you what was the truth.

In the second place, I beg leave to state, that every part of the answers to the condescendence which was read by Mr. Cockburn at the trial, was printed; and with regard to the alleged omission of a passage in one of Mr. Stuart's letters to Mr. Gibson, without any notice of such omission, you ought to have observed that No. X. of the Appendix is given expressly as an “ EXTRACT ” of Mr. Stuart's letter to Mr. Gibson; and that there is a line, or *break*, at the close of it, thus ———; farther, no *signature* is attached to it,—all clearly marking.

that this article of the Appendix contains a *part* only, and not the whole of a letter. Again, on referring to No. XI. of the Appendix, you will find it is a *complete letter*, bearing the title of "LETTER," and having the signature of the writer annexed to it; so that the charge of *omission* of part of a letter, *without any notice being given of such omission*, is wholly unfounded.

*Lastly*, In answer to the charge of the mode adopted in the Report, "of representing and printing the signature at the record, being different from the mode invariably in practice in printing pleadings" in the Court of Session, I beg leave to state, that this answer to the condescendence of Mr. Stuart is a *written*, not a *printed* pleading, the difference between which is known to every practitioner. It is the only copy given in to Court, and, therefore, your reasoning on the mode of adhibiting subscriptions to printed papers, is wholly inapplicable to *written* pleadings; but, as already said, I considered it necessary, *merely for the sake of accuracy*, to affix the signature in the report as it stands in the record.

*Mr. Bennet's Second Letter.*—"1st, You say you are not surprised I should feel anxiety on the subject of printing your signature for Mr. McNeill, 'if the *final revision* and *ostensible superintendence* of publication rests solely with you—a responsibility which I do not observe that you undertake, to the exclusion of other and subsequent revision and superintendence.' I have already said, that I consider the general responsibility of arranging and preparing the trial for publication, as resting with me; and I now add, that the responsibility of the *final revision* and *ostensible superintendence* of the first edition of the report of the trial, rests with me; and that I gave directions to the printer for throwing it off.

"2d, You say, 'It would have been desirable, and would have brought your observations to a more satisfactory and definite point, if you had simply stated *whether you considered, and held at the time, ME TO BE COUNSEL OR NOT.* If you did, then there seems to be little further to say. If you did not, I cannot find, in the different circumstances mentioned in your letter, any explanation or justification satisfactory to my mind.'

"To this I answer, that I gave not a moment's consideration to this matter. It was not my business to do so. I found your signature at the record, and I printed it as I found it. My opinion on this matter remains as before.—

"Now, I do deny the *intentional* omission of any part of this letter, which I conceived to have been referred to on the trial; but I have not the least doubt, that if you are desirous to have a full copy of that letter, it will be readily furnished by Mr. Stuart, on your applying to him for it.

*Lastly*, I repeat in the most pointed manner, the denial I formerly gave to your charge,—that your signature for Mr. McNeill was printed, as in the report of the trial, '*for the purpose of representing you, to persons ignorant of Scotch forms, as the counsel in the cause.*'

"I have only farther to add, that the great length of the Report, and the necessity of having it expeditiously published, (there being two very imperfect reports of the trial previously in the hands of the public,) should more than justify any trifling oversight (if there should be such) that may have inadvertently occurred in it."

# REPORT

OF THE TRIAL BY JURY,

PROFESSOR JOHN LESLIE

AGAINST

WILLIAM BLACKWOOD,

FOR LIBEL IN "BLACKWOOD'S EDINBURGH MAGAZINE."

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REPORTED BY WILLIAM BENNET, W.S.

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JULY 22, 1822.

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EDINBURGH :

PRINTED FOR W. AND C. TAIT, PRINCE'S STREET;

LONGMAN HURST, REES, ORME, & BROWN, LONDON;

AND WILLIAM TURNBULL, GLASGOW.

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1822.



THIS Report has been prepared with the greatest care and accuracy, under the sanction of Professor Leslie's Friends.

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## REPORT, &c.

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THE present is an action of Damages brought by the pursuer, Mr. Leslie, against the defender, Mr. Blackwood, under the late statute 59. Geo. III. Cap. 35. by which it is provided, that all actions brought before the Court of Session, where the conclusion shall be for damages and expenses only, shall be forthwith remitted to the Jury Court for trial, upon Issues to be adjusted in that Court, in the manner prescribed by the Act.

The Summons is in the following terms:

SUMMONS.—George, &c. Whereas it is humbly meant and shewn to us, by our lovite John Leslie, Professor of Natural Philosophy in the University of Edinburgh, That William Blackwood, Bookseller in Edinburgh, has, for some time past, conceived an unjustifiable rancour and malice against the pursuer; in gratification of which, he has had recourse to the most false and abominable libels against him; and, in particular, has been in the practice of publishing, in a work, entitled ‘Blackwood’s Edinburgh Magazine,’ and of which the said William Blackwood is the publisher, the most foul and atrocious calumnies against his private and public character, as a man, and as a professor: That, actuated by this motive, and by a profligate and wanton disregard of his feelings and reputation, the said William Blackwood has, in various parts of that work, to be more particularly condescended upon in the course of the process to follow hereupon, but especially in the 35th Number, at pages 502 and 503; the 40th Number, at page 355; and the 44th Number, at pages 190, 208, 209, and 222; represented, and held him out to the public, as a person distinguished by “*insolence*,” “*ignorance*,” “*impudence*,” and “*impertinence*,” as being an “*enfant perdu*,” as being “*actuated by a hostility to*

*the language of revelation, simply because it was so ; as “ going out of his path to recommend an impious work ;” as “ going out of his path to cast an ignorant sarcasm on the language of the Bible ;” as “ being an object of suspicion to those who hold the Scriptures in honour, or impiety in detestation ;” as being an impostor and dishonest ; and as being one of the public teachers of Edinburgh, by whom strangers, who come to the University here, have “ their religious principles perverted,” “ and their reverence for holy things sneered away,” and as being one to whom the application of these terms and statements was but his “ due :”* That these false, scandalous, malignant, and unprovoked aspersions, are highly injurious to the feelings, character, interests, and usefulness of the pursuer ; and have not only been persevered in for a very long time, but it has been plainly and repeatedly announced, in the foresaid publication, that they are to be continued : That, in order to prevent this threat from being carried into effect, and in reparation for what he has already suffered, and may hereafter suffer by the foresaid libels, the pursuer is entitled to exemplary damages : And although the pursuer has often desired and required the said William Blackwood to make him reparation for what he has suffered, or may suffer, by the foresaid false, scandalous, malignant, and unprovoked aspersions and libels, as well as to give up the names of the author or editor thereof, or of both, under certification that his concealing, or, in other words, protecting him or them, should be held as a great aggravation of his misconduct : Yet he refuses, at least postpones and delays so to do : Therefore, the said William Blackwood, defender, OUGHT and SHOULD be DECERNED and ORDAINED, by decree of our Lords of Council and Session, to make payment to the pursuer of the sum of £5000 Sterling, or such other sum, less or more, as our said Lords shall modify, in name of damages and reparation, or *solatium*, for the injuries which he has suffered, or may suffer, as aforesaid, together with the sum of £300, or such other sum as shall be modified by our said Lords, of expenses of process, including all extrajudicial expenses incurred by the pursuer thereanent, and that over and above the expense of extracting the decree to follow hereupon, conform to the laws and daily practice of Scotland, used and observed in the like cases, in all points, as is alleged —Our will is herefore, &c.

*Dated and signeted the 13th day of December, 1820.*

This Summons was called in Court on the 19th Jan. 1821, and appearance entered for the defender, for whom the following defences were lodged :—

**DEFENCES** for **WILLIAM BLACKWOOD**, Bookseller in Edinburgh, in the action against him at the instance of **JOHN LESLIE**, Professor of Natural Philosophy in the University of Edinburgh.

The present action is clearly irrelevant, and the defender is confident that it will accordingly be dismissed.

The defender must, in the *first* place, observe, That the present summons is framed in the most extraordinary and preposterous manner, and with a total disregard of the plainest and most necessary rules, by which, in actions for defamation, the summons must be framed. The defender believes, that there is no instance in the record of Court of a composition similar to the present summons.

The summons commences by stating, that the defender has “for some time past conceived an unjustifiable rancour and malice against the pursuer:” Unless proved by relevant and sufficient facts, this vague allegation clearly goes for nought. Then the summons proceeds as follows: “In gratification of which,” (the said rancour and malice,) “he has had recourse to the most false and abominable libels against him; and, in particular, has been in the practice of publishing, in a work entitled ‘Blackwood’s Edinburgh Magazine,’ the most foul,” &c. The summons has been so framed, as to create a belief that the defender had been instrumental in attacking Mr. Leslie in a variety of other publications, and that the Magazine has been selected only as one instance, of numberless publications in which the defender had gratified his alleged “rancour and malice.” In point of fact, this insinuation is not less irrelevant than it is false. The summons particularises only three numbers of the said Magazine, and any more general allegation is wholly inadmissible, and is moreover positively untrue.

This, then, being the case, the ground of action is in fact narrowed to the observations respecting the pursuer’s publications, contained in the parts referred to in the three numbers described in the summons of the foresaid Magazine. The relevancy of the action must be determined with reference to the facts specified in the summons.

The *next* peculiarity in this summons, is the extraordinary



and unprecedented circumstance in the law of libel, that the summons does NOT SET FORTH ANY ONE OF THE PASSAGES WHICH ARE THE ALLEGED GROUND OF ACTION, or *in which the pretended calumnies and libels are contained*. The defender submits, that such a summons cannot be entertained in Court. In every action of damages, a relevant ground of action must be stated. In an action of damages for alleged defamation, contained in the passages of a critical work, the passages containing the pretended libels ought to form part of the summons,—else how can the relevancy of the action be ascertained, or the limit be drawn between wanton, rancorous, and malicious attacks upon the one hand, and the fair, nervous, and indignant language of literary discussion on the other; the exercise of which is one of the privileges of the freedom of the press, and the *free* exercise of which is essential to chastise the rashness, and to expose the ignorance, of presumptuous and dogmatical assertion, and to restrain the literary self-sufficiency and arrogance, which, without even elementary knowledge, presumes to condemn and sneer at that, which the whole Christian world have uniformly admired.

In the present case, the observations and comments which are the ground of the action of damages, are all contained in the course of remarks upon opinions, doctrines, and assertions published by Mr. Leslie in literary or philosophical works. What a person so publishes, may be highly beneficial, or extremely prejudicial, to the interests of truth and morality. The publication is the property of the public. The author hazards his reputation upon the work; and he is liable to be arraigned at the bar of the great tribunal of free discussion, for ignorance, arrogance, or infidelity. Of all these, and similar offences against good taste, and the cause of truth and religion, an author *may be* guilty; and for all such offences, he *ought* to receive the chastisement which they deserve, and which it is one of the privileges and objects of a free press to apply.

Before the relevancy of any action of damages, at the instance of an author whose publication is thus commented upon, can possibly be considered or determined, it is absolutely necessary that the passage containing the observations which are alleged to be libellous, should be recited and set forth in the summons; otherwise no distinct, rational, or relevant ground of action is condescended upon; and the Court cannot possibly judge whether the passages complained of are in fact merely the chastisement which the publications of the

pursuer called for. In the present summons, the pursuer extracts from the passages in question, and accumulates together a number of epithets and phrases, which he says are therein applied to himself; but he does not set forth the passages of the work in which these epithets and phrases are found;—he studiously avoids stating the grounds of the charges which are made against him;—he does not mention the proofs which are given from his own publications in support of these charges;—and he does not shew *in what manner* the different epithets and phrases of which he complains are severally introduced and applied. But this mode of framing a summons in an action for defamation, is equally absurd and unprecedented, and is intended to evade the important question of Relevancy which arises in the present case.

The pursuer says, that he is held out as a person guilty of “insolence,” “ignorance,” “impudence,” and “impertinence;” as being “actuated by hostility to the language of Revelation, simply because it was so;” as “going out of his path to cast an ignorant sarcasm on the language of the Bible,” &c. &c. Of all these charges an author *may be* clearly guilty in his publications;—he *may* exhibit insolence and ignorance;—he *may* shew a spirit of hostility to the language of Revelation, unaccountable on any other ground than the supposition that its fault is being the language of Scripture, if he is shewn to be absolutely ignorant of the alphabet of the language which he condemns; and he *may* “go out of his path to cast an ignorant sarcasm on the language of the Bible,” and be justly and rightly accused thereof, if, in a literary work on the Philosophy of Arithmetic, he shall condemn the language of the Old Testament, “as the rudest and poorest of all written languages,” without having common elementary knowledge of the language, or being even aware of the attributes and characteristics of the language, which are known to men of liberal education as a matter of general information. It is quite obvious, that the highest offences against the cause of truth may be committed in literary publications; that matters of which the author is supremely ignorant, may be treated of with a degree of arrogance and dogmatical presumption, which cannot be too severely reprehended; and it is one of the permanent and highest uses of a free press, to expose such ignorance, and to chastise such levity and presumption. To bring the publisher of a literary work into Court in an action for defamation, by a summons accumulating and stringing together a number of phrases and

epithets, selected and picked out of a variety of unconnected passages in different parts of that critical work, but without setting forth and reciting any one of the passages in which these epithets and phrases are contained, without even quoting the *sentences* in which they are introduced, and far less the remarks and illustrations by which they are supported, is the most preposterous, unexampled, and barefaced attack upon free discussion, which has been attempted since the origin of the law of libel. If an author is chargeable with *ignorance, arrogance, and presumptuous and groundless sarcasms* against the language of Scripture, he deserves to be severely censured for such literary offences; and the conductors of a critical work deserve commendation for making them the subject of public observation. The present summons is therefore clearly irrelevant, as the pursuer HAS NOT DARED TO QUOTE ANY OF THE PASSAGES CONTAINING THE GROUNDS AND REASONS AND EXPLANATIONS OF THE CHARGES OF WHICH HE NOW COMPLAINS.

The *good taste* and *propriety* of the language in the passages referred to, the defender is not bound to maintain or defend in a court of law. But he distinctly asserts, that all the remarks in which the epithets and phrases contained in the summons occur, are completely within the bounds of fair and free discussion, and are supported by such facts and circumstances, and by such extracts from the pursuer's publications, as completely to exclude the charge of unwarrantable and unprovoked attack.

The defender confidently submits, that a more important question of relevancy cannot occur; and he maintains, that the artful and extraordinary mode in which the summons is framed, is merely an attempt to evade that question of relevancy, and is one of the most direct attacks on the freedom of the press ever attempted. If the publications of the learned pursuer all afford such foundation for the charges of which it complains, as to exclude the pretence of malice, and to bring these remarks within the pale of free criticism and discussion, then there is no calumny,—and there is no ground of action. But that point must be settled in the first instance; and the Court will never for one moment sanction so direct an attempt on the liberty of the press, as to send a summons, claiming damages for expressions said to be contained in passages in a literary work, as relevant to the Jury Court, when the pursuer purposely and studiously withholds from the Court



the passages which he alleges to contain the libels, and from which alone the Court can judge of the relevancy of the summons.

There are many other considerations of still greater importance, which will occur in judging of the relevancy of the summons. But, in the mean time, the defender has already sufficiently shown that the summons is wholly irrelevant. He will only add, on this point, that no action for libel could be brought into an English Court, the declaration withholding the passages in which the pretended libels occur.

Further,

1. If the passages had been set forth, it would appear that there is no attack whatever on the learned pursuer, as a Man, or as a Professor. The remarks of which he complains are directed against him in his character of an *Author*, and are all confined to observations suggested by his publications.

2. The Magazine, in every instance enumerated in the summons, lays fully and fairly before the public the *grounds* and *reasons* of the observations and comments made on the learned publications. No remark is made, of which the grounds occurring in the learned pursuer's works are not quoted and referred to. The matter is therefore, in all the instances, fairly laid before the public, that they may judge, having the whole facts before them, whether the observations made in the defender's Magazine are just and well founded. It is clear that your Lordships ought to have the same information in judging of the relevancy of the summons. Had that information been given, the Court would have been able to judge whether any of the epithets enumerated and complained of in the Summons, or any other ground of action occurs at page 355. of the 40th Number of the Magazine, where the following passage is to be found:—"I hope, at least, you will see that I have followed a principle somewhat different from that adopted by Mr. Leigh Hunt in his classical translations. The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew. By the way, in looking over the last number of Dr. Watt's *Bibliotheca Britannica*, I have discovered, with amazement, that that celebrated personage was a poet in his youth. Why don't you review his 'Phoenix Park,' 'Killarney,' &c.? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie's monstrous plagiarism of his theory of heat,

from an old volume of the Philosophical Transactions? For shame."

There is some ridicule in the foregoing passage,—there may be some bad taste; and the concluding sentence probably contains the sting which has given rise to this absurd action:—But what *ground of action* for damages can be extracted from the foregoing passage, if the pursuer does not mean so to narrow the liberty of the press as to protect himself equally from ridicule, and from the charges of literary ignorance and scientific plagiarism, the defender is at a loss to discover.

In the same manner had the passage containing the phrase "*Enfant perdu*," (which is quoted in the summons, and appears even by itself a singular ground of action for a libel,) been set forth in the summons, the Court would have been able to judge of the relevancy of making such a phrase a ground of action in a court of law, and would have detected the egregious literary misapprehension of the meaning of the phrase, "most unfortunate, though perhaps a courageous *Enfant perdu*." The meaning of the phrase *Enfant perdu*, the Dictionary of the French Academy thus explains: "On appelloit autrefois *Enfants perdu*, les soldats détachés, qui commençoient l'attaque un jour de combat!" (Anglice 'Skirmishers.') Such is the meaning of the French phrase here made the ground of an action of damages. But it may be that the members of the *Institute* do not inherit the accurate knowledge of the French language for which the *Academy* were so celebrated.

In like manner, the word "ignorance," one of the epithets most grievously complained of, occurs in the following sentences at one of the pages referred to (page 208.) of No. 44: "As I am on the subject, I may remark, that I was at first a little surprised to find, that, in the second edition of the Philosophy of Arithmetic, which was announced since I had pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of 'ignorance;' but, on inspection of the work, my wonder ceased, for I perceived that the new edition was nothing more than the old one, with a fresh lying title-page, and a few additional leaves; in short, only a collusion between an honest bookseller and a doubly honest Professor to impose on the public, and get rid of the remaining copies of an unsaleable work." Had the pursuer set forth this passage in this summons, the Court would have been enabled

to judge whether there is ground of action in the use of the word "ignorance," or generally in the foregoing passage. The alleged ignorance even of the alphabet of the Hebrew language, which the learned pursuer, in a scientific work, *went out of his way* to describe "as the *rudest and poorest* of all written languages," is not denied in the summons, and cannot be disputed. Is there any ground of action for alluding to such an instance of ignorance:—or, is the remaining part of the above passage actionable; or is it not the exposure of literary imposition and unworthy trick, by which the public is protected, and which it is one of the legitimate duties of true criticism to make.

Under protestation to add and eik, &c.

(Signed) JOHN HOPE.

The action came, in the course of the Rolls, before Lord Gillies, Ordinary, on the 1st Feb. 1821, when, after hearing counsel for the parties at considerable length, his lordship pronounced the following interlocutor: "Lord Gillies,—*Act.* Cockburn, Moncrieff, *et* Jeffrey,—*Alt.* Hope, More, *et* Erskine." "Having heard parties' procurators, appoints the cause to be further heard to-morrow or Friday."—(Signed) "AD. GILLIES."

The cause was again called on the 3d Feb. 1821, and counsel further heard, when the following interlocutor was pronounced: "Lord Gillies, *partibus ut intra*, Having called the cause in presence of the counsel for the parties, remits this cause to the Jury Court."—(Signed) "AD. GILLIES."

The process was accordingly transmitted to the Jury Court, where the following order was made: "In the Jury Court, Edinburgh, 12th Feb. 1821, It is ordered in this case, that the pursuer lodge a condescendence, in terms of the Act of Sederunt, on or before the 1st day of March next; and that the defender lodge answers thereto, on or before the 1st day of April thereafter. By the Court."—(Signed,) "WILLIAM CLERK, First Clerk, J. C."

A condescendence for the pursuer was lodged in terms of this order, on the 4th June, 1821, to which the defender put in answers on the 9th November following, and on the 6th December thereafter, the following motion, on the part of the defender, was intimated to the pursuer's agent. "In the Jury Court, John Leslie, *pursuer*, and William Blackwood,



*defender*, Take notice, that on Saturday the 8th day of December current, or as soon thereafter as counsel can be heard, this honourable Court will be moved on the part of the defender, that he be heard upon the relevancy of the pursuer's action and condescendence; and that the Court do remit the case to the Court of Session for this purpose."

Signed, A. G. ELLIS,  
*Agent for the Defender.*

To Æneas Macbean, W. S.  
*Agent for the Pursuer.*

In consequence of this notice, counsel were fully heard on both sides, on the 10th of December, 1821, when the Court postponed its decision till next term, in order maturely to consider this important question.

On the 9th January, 1822, notice was received that the Court would deliver their opinions on the motion for a remit on the 14th.

On that day, the cause was called in Court, but the decision was again delayed at the request of the defender's counsel, who craved to be further heard.

The cause was again called on the 16th of January, 1822, when counsel were fully heard farther upon the defender's motion, when the following order was made:—"In the Jury Court, Edinburgh, 16th January, 1822. It is ordered, on hearing counsel for both parties fully on this motion, that that part of the said motion craving a remit to the Court of Session, be dismissed. By the Court.

(Signed) JOHN RUSSELL,  
Third Clerk of the Jury Court."

On this occasion, the Judges delivered their opinions to the following effect:—.

**LORD CHIEF COMMISSIONER.**—It is necessary that some detail should be gone into, as to what we consider the solid grounds for deciding this case. It is an application under the 12th section of the act, to remit in terms of that clause, by which it is provided, "That it shall be competent and lawful for the Jury Court, when it appears to the said Court, in the course of settling an issue, or issues, or at any time before trial, in the cases remitted to them as aforesaid, that there is a question or questions of law or relevancy which

ought to be *previously* decided, to remit back the whole process and productions to the decision of the Court of Session; the Lord Ordinary; or Judge-Admiral, who remitted the cause to the Jury Court, that the question or questions of law or relevancy may be considered and detained there"—the word "*previously*" is there used in a way quite unequivocal, that there *are* cases of law which must be decided before going to trial; and it must therefore be considered whether, in the case before us, there is a question which should be previously determined. It is necessary farther, therefore, to consider the point of law; and if we see, in the whole circumstances of the case, that the matter of law may not be previously but subsequently determined, we will not remit: at the same time, if there be a doubt whether the point should be decided previously or no, it would be improper to send parties to trial unwittingly. There appears to me to be in this case just four questions:

1st, Whether libel, or no libel, is a matter of law?

2d, Whether criticism, however severe or sarcastic, be, or be not, a libel?

3d, The most important of these questions, Whether the work in question is a work of this last-mentioned description? and,

4th, Which should be considered first, not last, the form of the summons.

We are all agreed on this question, namely, that libel or no libel is a question of law in Scotland. There is not much said on the subject in the law books of Scotland.—Stair advises that reference should be made to the law of England. The Court stands in this position, that if a question of law arises, there is no need of applying to the Court of Session to instruct us in the law, as we know how to decide. It is well known, that a very important question of law arose in a case tried before me at Dumfries, when I gave the parties their option to have a special verdict, or a bill of exceptions. The counsel, in a way very flattering to myself, left it to me, and I considered a bill of exceptions the remedy. There can be no doubt that a bill of exceptions affords the most full and ample opportunity for subsequent discussion. His Lordship here remarked on the case of Tipper before Lord Ellenborough, and on the case of *Sir John Law v. Mr. Hood*, in last edition of *Erskine's Institutes*, not noticed in the text, but only referred to in a note: His Lordship proceeded;—

The parties will have an opportunity of excepting to the verdict at the trial. The nature of the alleged libel in this case must be gathered from the object of the work. I am clear that, in a work of this sort, criticism, even though its tendency is to ridicule, must be admitted, otherwise the first writers would maintain a monopoly of opinion on every subject; but if such criticism departs from the object of the work, and steps aside to attack private moral character, I would be the first in endeavouring to afford redress. Proper criticism is no libel, or at least it is a privileged and protected case of libel, such as giving a character to a servant, or pleading brief given to counsel. There is little of the law of Scotland stated on this point; the only case is that of Jardine the schoolmaster. Malice is taken away if the criticism is such as stated by Lord Ellenborough; and, therefore, there is then no right of action, and there is no libel. I think the law on this point is as laid down by Lord Ellenborough; but if wrong directions are given to the jury, the party may take a bill of exceptions, the effect of which will be, that whatever the verdict may be, the case may be ultimately decided in the House of Lords. Observe what is done in England. There a bill of exceptions is considered an odious remedy to the bench. I have not been able to find any reason why it should be odious, but such is the case; and, accordingly, other plans are adopted there, as the objection to, or arrest of judgment; writ of error, before or after trial, and special verdict. The cases quoted by Mr. Hope, on the part of the defender, came all after trial; and in one case the question was an *objection* to the form of the declaration,—not properly a *demurrer*. A party taking a demurrer must previously *admit the facts*, and after the decision of the demurrer, the only point that remains is to assess the damages. The demurrer alluded to on the other side was not to the action, but by the defendant, to the form of the declaration, (Price's Reports, Court of Exchequer, Baron Thompson,)—there is scarcely an instance of demurrer to the action. Being particularly anxious to collect every information on the point, I wrote to Sir John Richardson and Baron Wood, a letter for information on this question, "Whether you have ever met with a demurrer to a declaration in a case of libel, because the matter complained of was not in law a libel," to which I had answer, that neither of them recollected of any demurrer on this ground. This made me doubt Baron Wood's recollec-



tion, and I therefore looked into the case of demurrer referred to, and found it not to be to the action, but to the form of the declaration.

As to the bill of exceptions, I have always allowed the bill in all cases since this Court began, being anxious to encourage it, because I consider it a most admirable, as well as the most ample form of redress. His Lordship here referred to the clause in the act 1815, providing for the procedure by bill of exceptions, and to the verdict in the case of *Clark v. Cannan*, 6th July, 1818, which was excepted to, and the cause afterwards decided in the House of Lords, in June, 1819. By the bill of exceptions, the directions to the jury may be excepted to; and, in short, there is nothing that can come before the Court that cannot be again examined into under it.

As to the last question, the application of the law which I have endeavoured to explain, must not, as contended for by Mr. Hope, be made to rest entirely upon general principles; if I had pursued this course in all the cases that have come before me, in this Court, there would have been inconsistent decisions in many of them. No, the application of the law must rest on the case itself; in this case the law and the facts are in a manner united. We must examine whether the matter charged here, appears from the libel and defences, condescendence and answers, to involve a point of law which ought to be decided before going to trial. Now, what is there stated? The first criticism there stated is of a Hebrew work; *sarcastic* at least, I think, but it confines itself to the object of the work, supposing no personal allusion; but again, it withdraws from the object of the work in the remaining articles, where it is said, the pursuer is held out to be the Professor who perverts the religious principles of the young men who come as students to the University of Edinburgh. Now, I find it stated in the answers to the condescendence, that this "passage is not of and concerning the pursuer." Here it is denied that there is any attack upon him (Professor Leslie) as a man, or as a professor; and here the parties are at issue as to the fact, which is evidently a matter for a jury to determine. I do not intend to give any opinion upon it, as to the import of any of the expressions, but one, viz. the last, which, in my opinion, is highly injurious, if meant to apply to the pursuer. The matter charged in the libel appears to make a case, in which the question of law

need not be previously determined, but may afterwards. I am therefore of opinion, That

1st, There is no question of general law which we require to be instructed on. That,

2d, There is no question of particular law which requires to be previously decided.

3d, There is no reason to separate the facts from the law of the case.

4th, As to the summons, it appears from the reference there made to the Numbers and pages of the Magazine, that it is complete enough, in the specification of the libellous matter; and it charges malice. His Lordship then referred to the opinion of Lord Hermand, in the case of Forteith against Fife. On the whole, I am of opinion that the summons is sufficient to maintain action; that there is no general question of law we require to be instructed upon; and no particular case to require to be previously considered. This can be done afterwards.

LORD PITMILLY.—My views on this case have been already fully and satisfactorily stated by my Lord Chief Commissioner. I entirely concur both in the decision, and in the grounds of the decision. The application now made by the defender, that the cause be remitted back by this Court to the Court of Session to decide the matter of law, previously to going to trial, is on the 12th § of the Act which has been read. By it we are plainly called upon to consider two questions:

1st, Whether there is here a question of general law; and,

2d, Supposing that there is a question of general law, whether it is such as ought to be previously decided.

I have no doubt that libel or no libel is a question of law; or that severe criticism may be no libel. I can, however, conceive a case of pure law as to criticism, where there is clearly no libel, or where it does not apply to the party; and in such a case, we might send it back to the Court of Session. But we must here look into the summons and defences, condescendence and answers, and decide on the whole; and I think we are not entitled to remit it. I will not enter minutely into the question. To give any opinion on the motive of the matters charged, would be improper in this stage of the case. I may, however, notice one part of it, which has been already done by my Lord Chief Commissioner, viz. one passage of the work which is admitted to be a libel, but is said not to apply to Professor Leslie; now that must

go to a Jury, and we cannot separate law from matter of fact. If there is *one* point of the case that must go to a jury, the whole must go, as we cannot separate the case into questions of law, and questions of facts which are the subjects of proof.

LORD GILLIES.—I feel myself much in the same predicament with my Lord Pitmilley, and feel delicacy in adding any thing—but I am clear that there is nothing in law or relevancy which should make us send back this case to the Court of Session—we must remember, besides, that this is a privileged action. (His Lordship here read the first clause of the act, enumerating the description of cases required to be *further* remitted to the Jury Court for trial.)—The question does *not* appear to me to be—whether there is a question of law—for questions of law and relevancy must arise in every case, but whether there is such a one as requires to be previously decided, or as would warrant the Court in subjecting the party to discuss it in representations, petitions, and reclaiming petitions, &c. Preliminary questions, such as—whether summons properly executed—or where the matter is not of sufficient importance to infer damages on the principle *de minimis non curat prætor*, or the like, are questions of law, but upon all these the Lord Ordinary is entitled to decide. I certainly considered that there was no such question of law as to require previous decision, when the case was debated before me—in every case of libel, however, the question arises, whether the words are malicious or not—and if it appears that no such question as that already explained arises, or that it is not necessary to send it back, we would betray our trusts to send it back.—(His Lordship referred to the paragraph charging the Professor with the perverting the morals of youth.)—Certainly this is highly injurious. It is not denied in the answers that it applies to the Professors—but said not to apply to Professor Leslie. With regard to the case of demurrer alluded to by the Chief Commissioner, I understand the declaration and answers in England to be the pleadings on which the parties go to proof, and to be much the same as our condescendence and answers; and if I am right in this, these evidently cannot be compared with the summons and defences. With regard to the summons in this case, I have never in my practice, which is now of pretty long standing, met with a summons so specific, as to supersede the



necessity of a condescendence, and on looking at the references contained in this summons, I think it sufficiently specific—but the act of sederunt 1800 is better authority than either my opinion, or even that of all the members of the Court, at present alive, put together; and it enacts that no case whatever shall go to proof, until the facts are stated in a condescendence. The phrase is, that the defects of the summons may be corrected in the condescendence.—Such a specification is not required in a summons. I entirely concur with my learned brethren on the bench.

Thereafter, the condescendence and answers were mutually revised on behalf of the parties, and the following Issues prepared and adjusted by the Court for trial.

ISSUES in the Cause, in which JOHN LESLIE, Professor of Natural Philosophy in the University of Edinburgh, is *Pursuer*, and WILLIAM BLACKWOOD, Bookseller in Edinburgh, is *Defender*.

It being admitted that the pursuer is Professor of Natural Philosophy in the University of Edinburgh, and that the defender is proprietor and publisher of a certain periodical work, called ‘Blackwood’s Edinburgh Magazine;’ and it being admitted, that the 35th number of the said work, published by the defender at Edinburgh, on or about the month of February 1820, contains the following words and figures, viz. “*LESLIE versus HEBREW. Dublin, Jan. 20, 1820. Mr. Editor,—In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language, in his Philosophy of Arithmetic, though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is ignorant even of the alphabet of the language on which he thus presumed to offer an animadversion. The professional dictum alluded to is this: ‘The Oriental nations appear generally to have represented the numbers as far as one thousand, by dividing their alphabet into three distinct classes; but the Hebrew, the rudest and poorest of all written languages, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, and 400 and 200, 400 and 300, 400 and 400, and*

400 with 400 and 100.”—Philosophy of Arithmetic, p. 218.

“The rudest and poorest of all written languages! By my troth, Mr. John Leslie, these be bitter words; but the latter part of the sentence, by displaying the utter ignorance of the Professor, happily renders the railing of the former perfectly innocent. Indeed, so much ignorance and impertinence combined, will hardly be found in so short a compass, in the works of any other writer, of the smallest literary character. The merest smatterer in Hebrew—any one who had read the first page of the Grammar, could have informed Mr. Leslie, that the Hebrews had *not* recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear, that the Professor was totally unacquainted with the letters of the language he was criticising, or he would have known, that the five finals, (technically called *Camnephotz*,) are used to express the five last hundreds; and, therefore, that the glory of inventing the expedient, which he describes with such imposing minuteness of detail, is due entirely to himself.—So much for his qualifications to decide on the merits of Hebrew.

“But it appears to me, that he has a particular pique against the language;—that his censure arises as much from spleen as ignorance; for the Roman method of notation is still more clumsy than his fancied Hebrew system.” And the following words, viz. “They may be Arabic also; but to enter into the controversy respecting the comparative superiority of Hebrew and Arabic, for the edification of Professor Leslie, would be as profitable as to set about demonstrating the Seventeenth Proposition of Euclid’s Twelfth Book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere.”—And the following words, viz. “We must look, therefore, for some other reason; and perhaps we may find it in the unhappy circumstances in which Hebrew is placed—it is the language of the Old Testament. The language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume’s would say, dedicated to superstition, and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*. But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not

good generalship to entrust even the details of a siege to a blundering gunner or a rash volunteer; and I must consider the Professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects to be entitled to sneer at the credulity of Luther, the Dreams of the Christian Fathers, and the Fancies of St. John," (p. 230.)—And the following words, viz. "He may believe when I tell him, that in the eyes of those who know any thing on the subject, he makes as awkward a figure as the most deficient digit he ever 'caused modify.' He may also assure himself, that the rule, *ne sutor ultra crepidam*, is truly a golden one. He is perhaps a mighty respectable third or fourth rate mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself; but when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of Critics and Scholars, nothing can be more pitiful. And yet, (p. 232.) he blames Joseph Scaliger (whose name as a man of learning is *rather* higher than Mr. Leslie's as a mathematician) for quitting his usual studies to meddle with mathematics. So easy is it to perceive the presumptive dogmatism of another, and to overlook our own.

WHETHER the whole or any part of the said words, are of and concerning the pursuer? And whether the pursuer is therein falsely, maliciously, and injuriously represented, and held up to ridicule and contempt, as ignorant of the Hebrew language, and even of the Hebrew alphabet, or as being guilty of impertinence, or of disliking the Hebrew language, merely because it is the language of the Old Testament, and to be attacked, *per fas et nefas*, or as being an *enfant perdu*, to the injury and damage of the said pursuer?

It being also admitted that the fortieth number of the said Magazine, published by the defender at Edinburgh, on or about the month of July, 1820, contains the following words, viz. "The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew. By the way, on looking over the last number of Dr. Watt's Bibliotheca Britannica, I have discovered, with amazement, that that celebrated personage was a poet in his youth:—why



don't you review his Phoenix Park, Killarney, &c. ? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie's monstrous plagiarism of his theory of heat, from an old volume of the Philosophical Transactions ? For shame. Yours affectionately—O. P.”

WHETHER the whole, or any part of the said words are of and concerning the pursuer, and falsely, maliciously, and injuriously represent and hold up the pursuer to ridicule and contempt ; as being a plagiarist, to the injury and damage of the said pursuer ?

It being also admitted, that the forty-fourth number of the said work, published by the defender at Edinburgh, on or about the month of November, 1820, contains the following words, viz. “ In a work of his, treating on arithmetic that “ celebrated” man thought proper to go out of his way to revile, in a most dogmatic and insulting manner, the Hebrew language. I asserted that he did not know even a letter of the tongue he had the impudence to pretend to criticise, *and I proved my assertion*. I leave the decision of the question to any Hebraist—to any man of common sense in the land. I proved that he was actuated by a hostility to the language of revelation, simply because it was so ; and I defy any one to refute me. This unfortunate cockney, who is lamenting over my hard treatment of the Professor, of course cannot be supposed to know any thing about the matter in dispute ; but what I am saying, is not the less true on that account. As I am on the subject, I may remark, that I was at first a little surprised to find, that in the second edition of the Philosophy of Arithmetic, which was announced since I had pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of ignorance. But on inspection of the work, my wonder ceased, for I perceived that the new edition was nothing more than the old one with a fresh lying title-page, and a few additional leaves ; in short, only a collusion between an honest bookseller, and a doubly honest Professor, to impose on the public, and get rid of the remaining copies of an unsaleable work. Here, then, is the vile offence against decency as committed by me. What reason have I to respect Mr. Leslie ? His Essay on Heat ! The matter of that work is no great affair, and the manner is so bad, that even a brother reviewer pronounces it to be

execrable and ‘drossy.’ His mathematics!—There is not an original mathematical fact of the smallest value in all his book; and his barbarous stile, and vile arrangement, have done a great deal to obscure the merit of what he has purloined. I do not intend, for it would not be the proper place to go into any detailed remarks on his geometry, but every mathematician has laughed at his droll proof of the doctrine of parallel lines—at his doctrine of ratios—at his failure in proving his very first proposition, the foundation of his system, and a thousand other such *betises*. Am I to bow to him because he is an Edinburgh Reviewer? I question the inspiration of that worthy oracle. And as to the Professor’s own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken Leslie the reviewer, to some enormous over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying, ‘Pretty poll, pretty poll,’ to itself. ‘Foul witch, foul witch,’ to every passer by. Look now, I beseech you, at his article on the north-west passage!!! What other claims to respect he possesses I know not, except his having made some neat second-rate chemical experiments, and invented some handy little instruments; but even if his claims were ten times as weighty, they should not have deterred me from speaking as I thought. A man who would go out of his path, on an inquiry on the nature of heat, to recommend an impious work—and in a treatise on arithmetic, to cast an ignorant sarcasm on the language of the Bible, or to sneer at the *fancies* of one of the Apostles, must ever be an object of suspicion to those who hold the scriptures in honour, and impiety in detestation. We have no assurance that he may not digress as culpably hereafter; and if he does so, it is only fair to give him warning that I shall take care to point it out.”

WHETHER the whole, or any part of the said words are of and concerning the pursuer, and falsely, maliciously, and injuriously represent and hold up the pursuer to public ridicule and contempt, by representing him to be, or asserting, that he is an insolent dogmatist, or that he has the impudence to criticise that of which he is ignorant, or that he is actuated by hostility to the language of revelation, simply because it is the language of revelation, or as being lying, dishonest, or joining with a bookseller to impose upon the public by dishonesty, or as having purloined from

other authors ; or, as having been guilty of a thousand *betises* ; or, as resembling a parrot ; or, as an object of suspicion to those who hold the Scriptures in honour, and impiety in detestation ; or, as going out of his way to recommend an impious work ; or, as having cast an ignorant sarcasm on the language of the Bible ; or, as sneering at the fancies of one of the Apostles ; to the injury and damage of the said pursuer ?

It being also admitted, that the said forty-fourth number of the said Magazine contains the following words ; viz.—  
 ‘ With grief I have perceived, that many of the young men who go from this country to Edinburgh, to pursue their medical studies, come back with their religious principles perverted, and their reverence for holy things sneered away. It would be very unjust to accuse any *individual* of this weighty charge, but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to shew, that the lights of the famous Northern Sect are not infallible ;—that under affected knowledge, gross ignorance may lurk ;—and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice, also, but much more sincerely, to learn that a better spirit is arising in your famous University ; and in spite of its levity, its humour, its follies, nay, even its transgressions, I think your magazine has been instrumental in this good work.’

WHETHER the whole, or any part of the said words, are of and concerning the pursuer ; and falsely, maliciously, and injuriously hold out and represent the pursuer, as being one of the public teachers, by whom young men, who come as students to the University of Edinburgh, have their religious principles perverted, and their reverence for holy things sneered away, to the injury and damage of the said pursuer ?

OR,

WHETHER the pursuer held himself forth as the author of certain discoveries in regard to freezing or artificial congelation, by means of evaporation under an exhausted receiver, he, the pursuer, knowing or being aware, that the same or similar discoveries were previously pointed out, or



described, in a paper in the sixty-seventh volume of the Philosophical Transactions of the Royal Society of London, entitled “ An Account of some Experiments made with an Air-Pump, on Mr. Smeaton’s principle ; together with some Experiments with a Common Air-Pump : By Mr. Edward Nairne, F.R.S.’

It being admitted, that a book entitled the Philosophy of Arithmetic, was published by the pursuer in the year 1820, and is described in the title-page, as a second edition improved and enlarged, meaning thereby, that the said book described as a second edition was enlarged and improved in comparison with the first edition of the said book—

WHETHER the pursuer, with the bookseller, in holding out to the public, the book first aforesaid, as a second edition enlarged and improved, was guilty of a dishonest attempt to impose upon the public ?

OR,

WHETHER the pursuer did write and compose the following words, contained in the eleventh Article of the Eighth Number of a certain periodical work, called the Edinburgh Review, for the month of July, 1804, page 399, viz. :—  
 “ We profess to be of the daily increasing number of those who do not think very highly of Count Rumford’s talents as a philosopher ; and if our former prepossession require any confirmation, (which it certainly did not,) he has taken very great pains in the elaborate performance now before us, to supply a variety of new proofs. This inquiry deserves our serious attention in many points of view. The exact coincidence of the only valuable and original matter which it contains, with the late curious and unexpected experiments of Mr. Leslie, throws a suspicion upon one or other of these authors which the public have right to see removed.”—Or, the following words, viz. p. 400. “ But if we were to state the opinion with which a review of the whole work has impressed us, we should say that Count Rumford had *borrowed* Mr. Leslie’s leading discovery, without completely understanding its nature and extent ; that he had pursued it imperfectly, and so mixed it up with error and fanciful theory, as to disfigure it, and almost prevent one from recognising the

property. The same inference will probably occur to such of our readers as attend to the following details; and we hope to make it still more obvious in our review of Mr. Leslie's work."—Or, the following words, viz. p. 402. "Now we are forcibly struck, we acknowledge, with the exact coincidence between all these curious experiments, and those of Mr. Leslie, as detailed in the sixteenth chapter of his Enquiry into the Nature and Propagation of Heat. The same series of observations upon the cooling of hot water through plain and coated vessels—the same sort of calculations, though certainly much better instituted—the same observation of an uniform increase of cooling or heating by coats of isinglass and lamp-black, form the prominent features of both inductions. Mr. Leslie's experiments, however, are more various and masterly—his mathematical illustrations and proofs are much more skilful; and, though we are not prepared, in this place, to examine the truth of his remote theoretical deductions, we are satisfied of the accuracy of his intermediate results, which far exceed those of Count Rumford in their number and generality. The next part of the inquiry now before us, is, however still more striking, from its coincidence with Mr. Leslie, to whom the author has not been able to conceal his obligations, although he has certainly abstained from acknowledging them."—Or, the following words, viz. p. 404:—"We shall dismiss this part of the subject, with expressing our high admiration of that very important and elegant modification of the air-thermometer, which Mr. Leslie, not Count Rumford, has happily contrived; an improvement calculated to introduce as much accuracy, and to open as wide a field of discovery in the science of heat, as the combination of glasses did, in the sciences of astronomy and optics. By it we are enabled to weigh, with the utmost nicety, all proportions of caloric, and to estimate, as correctly as by a delicate balance, every variation of temperature. In reviewing the application of this happy invention to the purposes of investigation, as detailed by the discoverer himself, we shall have an opportunity of doing justice to its merits. At present we hasten to sketch the uses which the borrower of the idea has made of it, and in which we shall again be satisfied how unwilling he has been to deviate from his original."—Or, the following words, p. 414:—"That we do not value without some reason Count Rumford's talents as an experimentalist,

and as a reasoner on a confined scale, from the proximate doctrines of his experiments to the useful arts, may be gathered partly from the illustrations formerly quoted, and partly from the practical applications with which his paper concludes. These are, indeed, in this instance, the applications of discoveries not his own; but they show as much useful ingenuity as if he himself had contrived the instruments, and performed the fundamental experiments of which we have been constrained to deny him the merit.”—Or, the following words, contained in the tenth article of the thirty-first number of the said Review, viz. p. 240 :—

“ M. Humboldt laments that he had not an opportunity of trying, within the tropics, the photometer with which Professor Leslie has enriched our philosophical apparatus. We heartily join him in that feeling; but we regret still more that he had not employed the hygrometer, which the same philosopher has constructed, from a nice view of the nature of evaporation, and which, combining accuracy of principle with facility of application, promises, when better understood, and more generally diffused, to procure incalculable advantages to science, and to the practice of the useful arts.”—Or, the following words, contained in the fourth article of the forty-eighth number of the said Review, viz. p. 339 :—“ Mr. Leslie is well known to the scientific world, by the ingenuity he has displayed, in the contrivance of his methods and instruments, in those experimental investigations to which he has directed his attention. The subjects which he has now announced, are some of the most difficult in the branch of science to which they belong, and, in the present state of knowledge, can be elucidated only by very minute and accurate observations. We might therefore anticipate an interesting work from the title of the present publication, and we are persuaded, that an analysis of it cannot fail of being acceptable to our readers.”—Or, the following words, p. 340 :—“ A part of the subject of heat, which, it is well known, Mr. Leslie has very successfully investigated, is that relating to what is called its radiation. There are two modes in which heat is discharged from bodies. A portion is communicated to the contiguous matter, and is slowly diffused through it. Another portion, when the body is placed in an aerial medium, is discharged with rapidity, darts through the air to a distance, and even at that distance, when intercepted, produces a heating effect. This forms what is called the ra-



diation of heat. We are indebted to Mr. Leslie for the discovery of the important fact, that different kinds of matter at the same temperature, discharge very different quantities of heat by radiation.—Or, the following words, p. 343, viz.—‘ Mr. Leslie was enabled to ascertain many of the facts on this subject, with more precision than could otherwise have been attained, by an instrument of great delicacy which he invented, the differential thermometer, well known, we presume, to most of our readers. The common air thermometer is useful, from its being capable of showing the most minute variations of temperature ; but it is also liable to great disadvantages, in being instantly affected by any variation in the temperature of the surrounding medium during an experiment, and also by variations in atmospheric pressure. In the differential thermometer, these sources of error are excluded.’—Or, the following words, p. 344 :—“ The same instrument, under various modifications, has been applied by Mr. Leslie with much ingenuity to other purposes.”—Or, the following words, p. 345 :—“ Passing from the consideration of the relation of heat to air, Mr. Leslie proceeds to consider the relations of air to moisture. There is no instrument which it has been found more difficult to construct, than one which shall give accurate indications of the state of the air with regard to humidity or dryness. The greater number have been framed on the property which certain bodies have of attracting water from the air, and of thereby increasing in volume, so that, if a substance very sensible in this respect be selected, and if contrivances are adapted to it, to show minute alterations of volume, these may indicate degrees of moisture.—Many hygrometers or hygroscopes, as some name this form of the instrument, have been constructed on this principle ; but they are all liable to inaccuracy from various causes, and particularly from the substances employed suffering in time, some change of structure, so that their indications cease to correspond accurately with those from which the scale had been constructed. Mr. Leslie has revived and improved an instrument of this kind. He employs a tube of ivory containing quick-silver, with a glass tube adapted to it, and to which a scale of equal parts is attached. When the ivory yields moisture to the air, which it does according to the dryness of the atmosphere, it contracts and presses the quick-silver higher in the tube ;—when it im-

bibes moisture from damp air it swells, and allows the quick-silver to subside. Mr. Leslie finds, however, that these variations do not correspond with the real measures of atmospheric dryness or humidity; near the point of extreme dampness, they are much augmented, while they diminish rapidly towards the other extreme. The addition of another scale, therefore, corresponding to this inequality, is necessary; and even with this, it cannot be regarded as either an accurate or delicate instrument.”—Or, the following words, viz. p. 346: “On the other principle, Mr. Leslie has constructed what he regards as the most accurate hygrometer. It is a happy application of the differential thermometer. One of the balls is coated with fine cambric paper, and the paper is moistened with pure water. Evaporation takes place; and from the cold which accompanies this, the liquid falls in the opposite stem. The extent of its descent is measured by the scale attached. This indicates the degree of cold; this, again, the extent of evaporation; and this, lastly, indicates the relative dryness of the air—the evaporation being proportionally greater as the air is more free from moisture. The full effect is very soon obtained, generally in about two minutes; and it continues permanent, under the same circumstances, as long as moisture is supplied to the covered ball.

“Mr. Leslie conceives that the theory of this instrument, or rather the theory of evaporation, on which it is founded, has been imperfectly understood; he, therefore, gives a more full statement of it, which would still, however, require perhaps some further elucidation.”

Or, the following words, viz. p. 348: “Mr. Leslie has invented another instrument, which gives indications of the quantity of evaporation from a humid surface, in a given time—what he has named the Atmometer.”

Or, the following words, viz. p. 349: “The law of evaporation in air, with regard to temperature, forms a very important subject of investigation, particularly as laying the foundation of the theory of rain. The late Dr. Hutton inferred, that the solvent power of air, with regard to water producing evaporation, must increase in a higher ratio than the increase of temperature. From this it followed, that on two portions of air, at different temperatures, each saturated, or nearly so with moisture, being mixed, part of the water would be precipitated; and this he regarded as the cause of rain. The inference, however, with regard to the law, seem-

ed to rest in a great measure on reasoning, or rather on conjecture. It was, therefore, extremely desirable that it should be determined by experimental investigation ; and we consider Mr. Leslie's researches on this subject, (of which we have a notice in p. 121, more brief than we could have wished,) as very important. He employed two methods ; but the following is the one which he preferred, especially for the higher temperatures."——Or, the following words, viz. p. 351 : " On this principle is founded the very beautiful experiment, invented by Mr. Leslie, of causing water to freeze by the cold produced by its own evaporation. The peculiar arrangement for this, consists in placing water in a porous earthen cup, suspended within the receiver of an air-pump, and placing at a short distance beneath it, sulphuric acid in a broad shallow vessel, so that an extensive surface of the acid shall be presented. On rarefying the air, the evaporation of the water is accelerated, and of course the degree of cold produced by that evaporation is increased. This, however, would soon be checked by the presence of the watery vapour, but this the sulphuric acid absorbs almost as quickly as it is formed ; keeps, therefore, the rarefied air always dry ; and thus allows the evaporation to proceed with the same rapidity. The temperature, therefore, continues to fall, until the water shoots into crystals of ice ; and even after it is entirely congealed, the ice continues to suffer evaporation, until it wholly disappears. Or, the following words, viz. p. 352. ' Our analysis of this work has been more than proportioned to its length, but it contains so many important facts, and interesting applications, that we could scarcely have done it justice within narrower limits. Its fault, indeed, a fault into which its author is perhaps liable to fall, is the too great condensation ; or rather, the imperfect development, of the peculiar facts and doctrines which are introduced. In these branches of physical investigation, where the conclusions are, in general, inferences resting on probable evidence, a full statement of the whole steps of the investigation, and a comparison with any opposite conclusions that may be drawn, is always satisfactory. Mr. Leslie's experimental results are sometimes too briefly stated, and the grounds on which his conclusions rest, are not always brought sufficiently forward ; the evidence for them, therefore, frequently appears not equal to the confidence with which they are delivered ; and objections occur which a more ample statement or il-



illustration might perhaps have obviated. We need scarcely add, that the whole work is marked by that ingenuity of invention, and that minute discrimination, which have always distinguished Mr. Leslie's investigations."

And whether the defender, in stating that he had often likened the pursuer to a parrot, meant and intended to allude to, and characterize, and did allude to and characterize, the pursuer, solely as the author of the said passages?

*Damages laid at L. 5000*

(Signed)

WILLIAM ADAM,  
Lord Chief Commissioner.

*Jury Court, 29th May, 1822.*

Thereafter, the pursuer gave notice to the defender of the trial being fixed for the 15th July; but shortly afterwards, notice was given on the part of the defender of a motion to be made in Court on the 13th, for a postponement of the day of trial.

The cause was accordingly called on the 13th of July, when the following procedure took place.

Mr. MORE, as counsel for the defender, rose in order to request the indulgence from the Court of a little delay in this case, in consequence of the sudden and unexpected absence of Mr. John Hope, the other counsel, who had taken the lead in the management of it, and who had fully prepared himself upon the case. He therefore threw himself on the indulgence of the Court, begging them to postpone this case, as it was impossible for him to prepare himself in so short a period to do justice to a case that had already occupied so much time from the other counsel.

Mr. JEFFREY said, that he stood in behalf of the pursuer, who had a right to fix a day for the trial of his case, and he wished to obtain a speedy decision: he hoped they would not consider his interest as of less moment than that of the other party. The case had now pended for a long time in spite of the pursuer; it had been protracted by discussions in the Court of Session, which had here been repeatedly resumed. The pursuer, standing as he did in the condition of a public teacher, had been calumniated in his moral and intellectual character, and had thus the most powerful motives stimulating him to clear away as soon as possible the stigmas thrown upon him. The request was nothing but this, that, on account of the absence of the junior counsel, they

should postpone the trial for the space of four months, now that the session was concluded, and counsel had not left town ; during which additional time, the pursuer would be forced to labour under all the reproaches thrown upon him, with the risk too of losing evidence on which he principally relied. He begged leave to inform them, that the pursuer had suffered a great loss of reputation and professional income, owing to the charge of corrupting the youth who were sent to him, which had the effect of greatly diminishing the number of his students. There was no one acquainted with Mr. More who was not convinced that there could be no one of equal standing at the bar more capable of doing justice to this case in the absence of the other counsel.

The LORD CHIEF COMMISSIONER here interrupted Mr. Jeffrey. His Lordship wished to state the view of the Court in this matter, and after doing this they would hear any thing farther he had to add, if he wished to enlarge his observations. He (his Lordship) was perfectly satisfied that the case was one of such a grave nature that it ought not to be deferred without cause ; but he conceived the sudden and unexpected absence of counsel a sufficient reason for delay. The only question was, whether, between this and Monday next, there was sufficient time for counsel to prepare for this case. He knew from experience how difficult it was to be suddenly and unexpectedly called to act as leading counsel. He was convinced, from the serious and important nature of the cause, that more preparation would be necessary. The Court having taken all this into consideration, they were of opinion that the case ought to be taken up this day se'ennight, that time being thought sufficient for delay ; the expense of which would be borne by the party who had the advantage of it.

Mr. JEFFREY said, that he entirely acquiesced in the proposal of the Court.

The Clerk was then directed to give the Jury notice to attend the Court on Saturday next, at eight in the morning.

The following list of witnesses was lodged on the part of the Pursuer :

#### LIST OF PURSUER'S WITNESSES.

- 1 Dr. David Irving, librarian to the Faculty of Advocates.

- 2 Reverend David Dickson, one of the ministers of St. Cuthbert's, or West Church, Edinburgh.
  - 3 Rev. Dr. John Lee, one of the ministers of Canongate, residing in Milton-House, Canongate.
  - 4 Rev. Dr. Alexander Brunton, one of the ministers of the Tron Church, Edinburgh, and Professor of Hebrew in the University of Edinburgh.
  - 5 The Rev. David Scott, minister of Corstorphine.
  - 6 Dr. John Thomson, physician in Edinburgh.
  - 7 Dr. Thomas Thomson, regius professor of chemistry in the University of Glasgow.
  - 8 Dr. Henry Dewar, physician, No. 5, Buccleugh Place, Edinburgh.
  - 9 Mr. Alexander Adie, optician in Edinburgh.
  - 10 Mr. Robert Cadell, bookseller in Edinburgh.
  - 11 Samuel Aitkin, bookseller in Edinburgh.
  - 12 Robert Miller, bookseller there.
  - 13 John Bradfute, bookseller there.
  - 14 Adam Black, bookseller there.
  - 15 William Tait, bookseller there.
  - 16 Charles Tait, bookseller there.
  - 17 George Boyd, bookseller there.
  - 18 Sir William Hamilton, Bart. residing in Edinburgh.
  - 19 George Buchanan, civil engineer, Nicolson's Street, Edinburgh.
  - 20 Dr. Thomas Charles Hope, professor of chemistry in the University of Edinburgh.
  - 21 Dr. Alexander Marcet, lately physician to Guy's Hospital, London, and lecturer on chemistry there, presently residing at Gibb's Hotel, St. Andrew's Square, Edinburgh.
  - 22 Daniel Ellis, Esq. Great King Street, Edinburgh.
  - 23 G. A. Walker Arnot, Esq. advocate.
  - 24 Mr. William Wallace, professor of mathematics in the University of Edinburgh.
  - 25 The Rev. Dr. George Husband Baird, principal of the University of Edinburgh.
  - 26 The Rev. Dr. William Ritchie, professor of divinity there.
  - 27 Dr. Andrew Fyfe, lecturer on chemistry in Edinburgh.
  - 28 The Rev. Robert Gordon, minister of the Chapel of Ease, Edinburgh.
- Lastly, the whole of the defender's witnesses here held as repeated.



The following list of witnesses was lodged on the part of the Defender.

### LIST OF DEFENDER'S WITNESSES.

- 1 James Noble, teacher of languages, residing in Edinburgh.
- 2 The Rev. Dr. Alexander Brunton, professor of oriental languages in the University of Edinburgh.
- 3 Robert Jamieson, Esq. regius professor of natural history in the University of Edinburgh.
- 4 Dr. Andrew Duncan, jun. physician in Edinburgh.
- 5 Alexander Adie, optician in Nicolson Street, Edinburgh.
- 6 The Rev. George Paxton, minister of the gospel, Edinburgh.
- 7 The Rev. David Dickson, one of the ministers of St. Cuthbert's, Edinburgh.
- 8 Adam Anderson, Esq. rector of the academy, Perth.
- 9 John Waugh, Esq. bookseller in Edinburgh.
- 10 The Rev. Robert Gordon, minister of St. Cuthbert's Chapel of Ease, Edinburgh.
- 11 William Tait, bookseller, Prince's Street, Edinburgh.
- 12 Charles Tait, bookseller there.
- 13 The Rev. Dr. David Ritchie, professor of logic in the University of Edinburgh.
- 14 John Campbell, Esq. of Carbrook, W.S. Edinburgh.
- 15 William Beilby, Esq. M.D. residing in No. 52, Frederick Street, Edinburgh.
- 16 The Rev. Dr. George H. Baird, principal of the University of Edinburgh.
- 17 Nicolson Bain, depute librarian, or assistant to the librarians of the University of Edinburgh.
- 18 The Rev. Alexander Nicol, M.A. professor of Hebrew in the university of Oxford.
- 19 Andrew Fyfe, jun. physician or surgeon, Adam's Square, Edinburgh.
- 20 Francis Jeffrey, Esq. advocate.
- 21 Macvey Napier, Esq. W.S.
- 22 George Steele, apprentice to William Blackwood, bookseller, Edinburgh.
- 23 William W. Ramsay, clerk to said William Blackwood.
- 24 Robert Cadell, bookseller, Edinburgh.

(Signed) WM. ELLIS,  
*Agent for the Defender.*

Edinburgh, 11th July, 1822.

The defender means also to adduce the whole witnesses in the pursuer's list, whose names and designations are here held as repeated *brevitatis causa*.

(Signed) W. ELLIS,  
*Agent for the Defender.*

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## THE TRIAL.

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JURY COURT.—EDINBURGH, July 22, 1822.

PRESENT,

Right Hon. WILLIAM ADAM, *Lord Chief Commissioner.*  
Honourable LORD GILLIES.

Mr. FRANCIS JEFFREY,	}	<i>Counsel for the Pursuer,</i> Mr. LESLIE.
Mr. JAMES MONCRIEFF,		
Mr. HENRY COCKBURN,		

ÆNEAS M'BEAN, *W. S. Agent.*

ROBERT FORSYTH,	}	<i>Counsel for the Defender,</i> Mr. BLACKWOOD.
JOHN SHANK MORE,		

W. & A. G. ELLIS, *W. S. Agents.*

The following Jury was sworn in, to try the Issues, viz.—

JAMES MACFARLANE, Castle Street.

HUGH FRANCIS CADELL, of Cockenzie.

JOHN FOWLER, of Windygowl.

WILLIAM AITCHISON, Younger of Drummore.

ARCHIBALD DUNLOP, Distiller, Haddington.

JAMES WADDELL, of Crofthead.

DUNCAN COWAN, Paper Maker.

ROBERT STEVENSON, Civil Engineer.

WILLIAM MILL, Hermitage Place.

DAVID ROBERTSON, Albany Row.

ALEXANDER SMITH, Banker.

GEORGE HUNTER, Merchant.

The Issues were then read by the Clerk.

The Jury were then addressed by Mr. Moncrieff, as follows:—

Mr. MONCRIEFF.—Gentlemen of the Jury, I have the honour to address you on this occasion in behalf of the pursuer, Mr. John Leslie, Professor of Natural Philosophy in the University of Edinburgh—a *name*, of which I may be permitted to say, without incurring the derision of the defender, that it could not be pronounced in any society of learned men in Europe, without those sentiments of respect which never fail to await great and unquestioned genius.

Gentlemen, Mr. Leslie is in the honourable situation of an instructor of youth in the University of Edinburgh. All men know that he is diligent in the duties entrusted to him, and zealous in his endeavours to exalt the honour of the University, and the country to which he belongs. His living and patrimonial interest depend on his activity and exertions in the prosecution of scientific researches. On the other side, you have the defender, Mr. William Blackwood, who is a bookseller, and a publisher of some consideration, and who, in the present cause, appears before you in the character of the publisher of a periodical work,—a miscellaneous magazine, of extensive circulation, the general character of which is not unknown—with which, however, we have here no further concern, than as it appears in the facts disclosed by the Issues lying before you, and which you are now to try.

The pursuer, Mr. Leslie, complains of a *series* of false, malicious, and injurious libels, published to his prejudice in the work of the defender; of a series of libels, touching at once his character as a man of principle and honesty—his qualifications as a Professor,—and his reputation as a man of science,—which hold out all his studies and all his labours to the contempt of the world, wherever this magazine may find its way; and by which, at last, he is falsely accused of the infamous and disgraceful offence of corrupting the principles of the youth committed to his charge.

Gentlemen, the subject of this action is not an incidental notice merely of one point, in one article of the work I have alluded to—it is a *series* of attacks upon the pursuer, in *every* point where his reputation, or his usefulness, or his fortune, or his feelings, could be affected by it. I say it is not one incidental notice of him, in any of these respects, which the libels embrace—and this is very important for you to consider,—that, though we must go into particulars, as stated in the Issues, Mr. Leslie's complaint is of continuous, multifarious, universal libels;—libels so brought forward, as to leave no room for doubt in the mind of any man of sound under-



standing, that no motive or possible reason can be assigned for them, but the most determined malice.

Gentlemen, the defender, Mr. William Blackwood, is the *Publisher* of these libels. *Who* is the *Author* of them we do not know. When they first appeared, and before this action was brought, we thought we knew the person; but the gentleman whom we supposed to be the author, as became a man of honour so situated, distinctly denied that he was the author. The pursuer then demanded of Mr. Blackwood, the publisher, by whom these libels were written. Mr. Blackwood, by letter, refused to give up his name, and distinctly stated, that he took the whole responsibility of these libels upon himself.

But, Gentlemen, the defender, Mr. Blackwood, is not responsible merely in this point of view, for these libels—his responsibility goes much deeper. It is not easy for us to suppose what could have been his motives for these continued libels against the pursuer. But they could not have been published without his deliberate approbation, and we have some reason to think, that they must have originated in a poor, paltry jealousy, arising out of the circumstance, that Mr. Leslie employs a rival bookseller, and is the largest contributor to a work which must be well known to you—I mean the Supplement to the *Encyclopædia Britannica*—the sale of which hurts that of a similar rival work published by the defender; and hence, the pursuer has been, for a series of years, the object of the defender's attacks in several publications, and especially in that which is now before you.

Gentlemen, many of these publications have been treated by my client with the contempt which they deserved; and even some of those comprehended in the issues might, if they had stood alone, have appeared to be too contemptible to be made the subject of a trial in a Court of Law. But they have been mixed up with charges of dishonesty, of corrupting the youth, and of a malignant enmity to the language of the Bible; and when such charges were brought before the world in the way adopted by the defender, it was not possible for Mr. Leslie to be silent, if he entertained any thoughts of preserving his usefulness, or maintaining his respectability and usefulness as a Professor, or his character as a man and an author.

He therefore brought this action; and I think I have already said enough to prepare you for considering it as a case of grave and serious importance; and if it shall be made out in evidence as it is represented in the issues, I have no doubt that you will give him ample redress.

The libel, as stated in the Issues, embraces four general classes of attack.

1st, There is a general impeachment of Mr. Leslie's reputation as a philosopher, and as a man of science. He is accused of ignorance and presumption, and even where his superiority as a man of science has been universally acknowledged, he has been treated as a plagiarist, as of secondary talents, and as deserving of contempt.

2d, He is charged with dishonesty, and collusion with others to impose upon the public.

3d, There is a malicious ridiculing of his person, which, taken in connection with the other charges, is evidently calculated to lower his estimation in society, and consequently his usefulness and comfort in the station in which he is placed.

4th, There is a malignant attempt to injure him in his usefulness and respectability as a public teacher; as having a spiteful enmity to our holy religion, and as being a corrupter of the religious principles of the young men who come as students to the University of Edinburgh.

These libels are contrived most artfully to destroy the character of the pursuer, Mr. Leslie; and they are mixed up with other matter which may be considered as fair criticism, so as to make their impression upon the minds of those at a distance, where Mr. Leslie is not so well known as he is here. That circumstance in the case is very useful in enabling a jury to detect the malice which dictated these libels. You will see this clearly when you come to put all together, more particularly in relation to the subject of the *fourth* issue, which bears the closest connection with all that precedes it.

Now, Gentlemen, let us go to the *first* Issue. The libellous article, of which a part is there stated, was published in the 35th number of 'Blackwood's Edinburgh Magazine,' being the number for February, 1820; and in that article, there is a collection of all the subjects of attack specified in the issues. The point on which they all hang is a casual remark of the pursuer, Mr. Leslie, on the characters or *letters* of the Hebrew alphabet, of which the writer of the article charges Mr. Leslie with being grossly ignorant; but which, I hope I shall be able to convince you in a few minutes, was merely made a pretence for a calumny against him of a much more serious nature.

Mr. Leslie had written and published a small book on the Philosophy of Arithmetic—a book, though small, of great research, and ingenuity; the very labour of which, amidst his

other studies, must be admitted to have been highly meritorious. It was the professed object of Mr. Leslie, in that work, to trace the progress of numeration in the earliest periods, and in various states of society. In doing this, the lights he has collected are very curious and instructive. He has shewn the different modes of notation used by the savages of the American continent, and the more advanced tribes of the Mexicans and Peruvians. He has explained the extensive system of the Chinese; the more limited methods of the Greeks and Romans; the improvement of Indian notation; and so on. And in his *Preface* to the work, (p. 11.) after adverting to the Grecian system with admiration, and comparing it with the Roman, he, at p. 218, in a note which bears reference to that p. 11 of the preface, alludes to the Hebrew mode of notation. It is in this note that the remark as to the Hebrew language, commented upon by the defender, occurs.

In treating of the Grecian mode of notation, Mr. Leslie had remarked upon the distribution of the twenty-four letters of their alphabet in three classes, corresponding to units, tens, and hundreds; and that, to complete the symbols for all the nine digits, an additional appropriate character had been introduced into each class; and then he says, "This beautiful system was vastly superior in clearness and simplicity to the combinations of strokes retained by the Romans, and transmitted by them to the nations of modern Europe. It was even tolerably fitted as an instrument of calculation, to which the Roman numerals were totally inapplicable."

Then in the note referred to, the words in the libel are given, "The oriental nations appear generally to have represented the numbers as far as *one thousand*, by dividing their alphabet into three distinct classes. But the Hebrew, the rudest and poorest of all written languages, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100. The Arabic alphabet containing twenty-eight letters, supplied fully the three classes."

Now, Gentlemen, you see that there must be twenty-eight letters to make out the three nines, and the Hebrew alphabet containing only twenty-two letters, they had no way of supplying that defect, but to take 100 and add it to 400, in the manner stated in the note.

Gentlemen, it is very material that I should state to you,



that in this observation, Mr. Leslie referred *exclusively* to the *ancient* Hebrew, and this appears quite plain from a note by Mr. Leslie himself, at p. 242 of the same work, Second Edition, where he is speaking of the Mexican method of notation. He there says, "I have already observed, that the Mexicans, blending the binary and denary scales, carried forward their numeration by 400 and 8000, the powers of 20 or a score. The Javanese appear to have proceeded partly in the same way, for, in their language, the name of *one bit of gold* signifies 400, and *two bits* 800. The Jews, *we have seen*, followed nearly the same idea; the higher numbers as far as a thousand having been represented, in the *ancient Hebrew*, by repeating the alphabetic character for 400." You will observe, Gentlemen, that this is a statement contained in the second edition of this same work; and you cannot have a doubt as to what the *characters* of the language were to which Mr. Leslie referred, namely, the *ancient Hebrew*, when I explain to you what the ancient Hebrew was.

The ancient Hebrew character undoubtedly meant that character which is called by the learned, the *Samaritan*. A few words will explain to you what is meant by this. It is that language in which the five books of Moses were originally written; and it is quite clear, if this libeller had any meaning at all, he must have referred to the ancient Hebrew, because his supposition is, that Mr. Leslie meant to refer to the language and character of the Old Testament, as the rudest and poorest of all written languages.

You will remark besides, that Mr. Leslie does not refer to the Hebrew language *generally*, as being the rudest and poorest of all written languages, but only to the mode of numeration in use among the Hebrews.

I believe there is not another notice or reference in the whole book to the Hebrew language, or a word that can be twisted to such a meaning, as that Mr. Leslie referred to it as being the rudest and poorest of all languages, *merely because of its being the language of the Old Testament*; and certainly the remark in itself, referring so incidentally as it does to the power of numeration, might have been of no importance in any point of view; and to me it certainly does appear to be of no consequence, but a matter of absolute indifference, whether Mr. Leslie was right or wrong in the remark which he made; for you see that the essential part of the libel goes, not merely to accuse Mr. Leslie of gross ignorance of the Hebrew language, but to impute to him motives

which would be disgraceful to Mr. Leslie as a man, and destructive of his character as an instructor of youth.

Observe, Gentlemen, how this remark of Mr. Leslie's is misrepresented in this libel. Look at the issues before you, and you will find the writer commences thus: "LESLIE v. HEBREW!" Observe that title, Gentlemen. "*Dublin, Jan. 20, 1820.* Mr. Editor, In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language in his Philosophy of Arithmetic, though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is *ignorant even of the alphabet* of the language on which he has thus presumed to offer an animadversion. The professional *dictum* alluded to is this;" and so the words are quoted as in the remark; and then the writer goes on thus: "The rudest and poorest of all written languages? By my troth, Mr. John Leslie, these be bitter words; but the latter part of the sentence, by displaying the *ignorance* of the Professor, happily renders the railing of the former perfectly innocent; indeed *so much ignorance and impertinence* combined, will hardly be found in so short a compass in the works of any other writer of the smallest literary character. The *merest smatterer* in Hebrew, any one *who had read the first page of the grammar*, could have informed Mr. Leslie that the Hebrews had not recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear that the Professor was *totally unacquainted with the letters* of the language he was criticizing, or he would have known, that the five *finals*, (technically called *camnephatz*,) are used to express the five last hundreds; and, therefore, that *the glory of inventing* the expedient, which he describes with such imposing minuteness of detail, is due entirely to himself." So much for his qualifications to decide on the merits of Hebrew."

I ask you, Gentlemen, is there not in all this a wilful misrepresentation of Mr. Leslie's remark? This is clear to demonstration; and there is a misrepresentation of the *fact*, besides, that Mr. Leslie misunderstood the alphabet of the language which he was criticizing. But the sting of it is this. The gross ignorance and impertinence, and the imposing minuteness of detail, with which he is accused by the writer of this libel, are all *preliminary* and introductive to what follows.



This libeller says, “ But it appears to me that he has a *particular pique* against the language : That his censure arises as much from *spleen* as *ignorance* ; for the Roman method of notation is still more clumsy than his fancied Hebrew system.” Then he goes on : “ They may be Arabic also, but to enter into the controversy respecting the comparative superiority of Hebrew and Arabic for the edification of Professor Leslie, would be as profitable as to set about demonstrating the seventeenth proposition of EUCLID’s 12th Book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere.” Then he says, “ We must look, therefore, for some *other* reason, and perhaps we may find it in the *unhappy circumstances in which Hebrew is placed* ; IT IS THE LANGUAGE OF THE OLD TESTAMENT—the language, as a philosopher, like Mr. Hume, or a partizan of Mr. Hume’s, would say, *dedicated to superstition* ; and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*.”

So you see here, Gentlemen, this libeller says plainly, Mr. Leslie made this remark, wilfully knowing that it was a false statement he was making ; not in ignorance of the language, even of the alphabet of which he is accused of gross ignorance, but *for the purpose and sole reason of throwing obloquy and contempt upon the language of the Old Testament, merely because it was so*. The pursuer, Mr. Leslie, is leagued with Mr. Hume, and other infidels of that sect, and is accused of attacking the language of the Bible, *per fas et nefas*. But the libeller does not stop here ; he goes on and says : “ But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not good generalship to entrust, even the details of a siege, to a blundering gunner, or a rash volunteer, and I must consider the Professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects, to be entitled to *sneer* at the credulity of Luther, the Dreams of the Christian Fathers, and the *Fancies of St. John*.”

Gentlemen, this last assertion is not true. It is false,—*there is no such thing in the book*. Then they go on. “ He may believe me when I tell him, that in the eyes of those who know any thing on the subject, he makes as awkward a figure as the most deficient digit he ever caused modify. He may also assure himself that the rule *ne sutor ultra crepidam*, (a shoemaker should not go beyond his *last*,) is truly a golden



one. He is *perhaps* a *mighty respectable third or fourth rate* mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself."

Gentlemen, who is the author of these libels, I have already told you, we do not know; but this defender, Mr. Blackwood, certainly must have very different ideas on the subject from all the rest of the world, when he permits himself to speak in these terms of the scientific character of Mr. Leslie. The libeller then goes on: "But when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of critics and scholars, nothing can be more pitiful. And yet he blames Joseph Scaliger, (whose name as a man of learning, is *rather* higher than Mr. Leslie's as a mathematician,) for quitting his usual studies to meddle with mathematics. So easy is it to perceive the presumptive dogmatism of another, and to overlook our own."

I have told you already, Gentlemen, that all these issues run into each other, and you cannot do full justice to my client on this first issue, until you have considered the third and the fourth issues. The whole are founded on the pretence of Mr. Leslie's hatred to the language of the original Hebrew, from which false and groundless assumption all the injurious consequences are deduced.

It is, in my view of the case, in reality of no great importance, whether Mr. Leslie was right or wrong in the remark which he made on the Hebrew language. It was incidental to the subject of his work. It was not the subject of his book, which was a work upon arithmetic. And though, in the remark referred to, he had committed an error, that would not have been sufficient to justify the terms of opprobrium and reproach which are applied towards him in the passages I have now quoted.

But, Gentlemen, Mr. Leslie was *right* in the remark which he made. The whole statement of the libeller is not only false and malicious in the inferences, but it is false in its foundation, and was known by the libeller to be so, when he wrote this libel.

The fact is certain, and will be proved to you beyond question, that the ancient Hebrew alphabet consisted of twenty-two letters. The writer of the libel accuses Mr. Leslie of ignorance, because he takes no notice of the five *final* letters. I shall explain to you, in a few words, that Mr. Leslie was right, and that he was so upon two distinct grounds.

1st, The ancient Hebrew is that character in which the Five Books of Moses, (called the *Pentateuch*,) as well as the other books of the Old Testament, were originally written. It was what has since been called the *Samaritan* character. To convince you of this, I shall read to you a few extracts from one or two books. The first I refer to is the "Elements of Hebrew Grammar," published by Dr. Charles Wilson, late Professor of Church History in the University of St. Andrew's. This learned Professor states, in the first page of his book, "The Hebrew, like most other languages of the east, is written from the right to the left hand; and the books in this language commonly begin where those of Europe end. The alphabet consists of twenty-two letters, the names and figures of which are contained in the following table:"—and then he describes them.

And, on page 19th, in treating of the Samaritan character, he says, "The *present* Hebrew characters are generally believed to be the *Chaldaic*, introduced by Ezra *after the return of the Jews from the Babylonish captivity*. The old Hebrew characters were those of the Phœnicians, *now called the Samaritan*, because the Samaritan Pentateuch is written in them."

I next refer you to Bishop Beveridge, a celebrated Prelate of the English Church, who, in his work entitled "*Institutionum Chronologicarum*," Book ii the quarto edition, published 1669 and 1705, at page 212, in treating of the Samaritan or ancient Hebrew language, and the mode of notation in use among the Hebrews, has the following passage: "Per *Samaritanum* sive *antiquum* Hebræorum Alphabetum "ut *litteris finalibus destitutum*, OMNES NUMERI PERPETUO "HUNC IN MODUM EXPERIMUNTUR;" and then the numbers from 100 to 900 are set down *precisely in the same way in which Mr. Leslie has stated them*.

I also refer you to a work of great authority, by Father Richard Simon, a Frenchman, also of considerable antiquity, published in 1685, entitled, "*Histoire Critique du Vieux Testament*;" in which all this is fully explained—that *the ancient Hebrew character was the Samaritan* \*.

And that you may understand this clearly, I will endeavour

\* He says, "ce qui confirme encore cette opinion c'est que les Samaritains ont conservé les anciens caracteres Hebreux qui étoient dès le tems de Moïse, et par conséquent les anciens exemplaires; au lieu que les Juifs prirent ceux des Caldéens au retour de leur captivité, dont ils se servent encore aujourd'hui." *Histoire Critique*, p. 64.

vour to explain it to you, that you may be enabled to follow the evidence which will be given by the learned gentlemen that are to be examined before you this day.

You will remember, Gentlemen, that, in the First Book of Kings, an account is given of the dissension which took place among the tribes of Israel in the reign of Rehoboam, the son of Solomon, when the tribes of Judah and Benjamin remained in Jerusalem under King Rehoboam, and the other ten tribes retired to Samaria, under Jeroboam. The first was called the kingdom of Judah, and the people themselves the Jews; the other the kingdom of Israel, and the people were termed Israelites. The Israelites were subsequently expelled from Samaria by the king of Assyria. Samaria was then occupied by heathens, who afterwards wished to be instructed in the laws of Moses, and for that purpose got a priest from the other tribes, which were then in Jerusalem. In that way they preserved among them the Books of Moses, written in the original character, which afterwards came to be called *the Samaritan*. I will read to you a passage from Father Simon, which I shall translate: “ Esdras, or those who made a collection of the Scriptures after the captivity, wrote them in the Chaldaic character, to the end that the people who were accustomed to these letters during the time of the captivity might be able to read the law of Moses, and the other books. *The Samaritans, on the contrary, always preserved the ancient Hebrew, or the Phœnician character* \*.”

From the circumstances which I have stated, these Samaritans became a mixed people, but they had preserved the Books of Moses in the original language, in the way I have stated. On the other hand, the tribes of Judah and Benjamin were carried away to Babylon, where they were kept in captivity for seventy years, and when they returned to Jerusalem from Babylon, they brought with them the Chaldean, or Chaldaic character, which they had learned during that time; and Esdras, finding that the people understood no other language, had the Books of Moses transcribed from the original Hebrew, or Samaritan character, into the Chaldaic, and this was called the Hebrew. From that comparatively recent period, (about 400 years before Christ,)

\* Esdras, ou ceux qui firent le recueil des ecritures après la captivité, l'écrivirent en caracteres Caldéens, afin que le Peuple qui s'étoit accoutumé à ces lettres pendant les tems de la captivité, pût lire la Loi de Moïse et les autres Livres les Samaritains au contraire out toujours conservé les anciens caracteres Hebreux ou Phœniciens.”



the Chaldaic character, as used by the Jews, was called Hebrew; while, on the other hand, the Phœnician language, which is the ancient Hebrew, was called the Samaritan. The Books themselves, and all the words, are the same; only the *character* of the language is different.

Now this old Samaritan language is the character in which the Books of Moses were originally written. It had no *final* letters, and consisted only of twenty-two letters to the end.

As to the question of numeration, I beg leave to refer to the work I have already mentioned—the work of Bishop Beveridge, at the same place. It will be put into your hands. He was a Bishop of the Church of England, as I have already mentioned; and, at the foot of page 212, he states the process of numeration by the Hebrews precisely in the same way that Mr. Leslie has done, in the remark in his Note. The characters of the alphabet go to 400; then, as there were no other means of increasing the number, they took the character signifying 400, and added the character denoting 100, to make 500; then, in the same manner, they took the 400, and the character signifying 200, to make 600, and so on to 800; and then they took the 400 with 400, and the character signifying 100, to make 900; and so on, adding the one to the other; and introduces this by the passage I have before quoted, at p. 212, which I ought to have translated, thus: “By the Samaritan, or *ancient Hebrew* alphabet, as it *wants the final letters*, all the numbers are constantly expressed in this manner;” and so he states them exactly as Mr. Leslie has done in his Note.

Then, Gentlemen, here is another Grammar, by Joseph Frey, in which he states the Hebrew letters as being *twenty-two* in number; and he gives these numbers in the same way that Mr. Leslie has done. He is speaking, you will observe, of the modern Hebrew, or Chaldaic character; and *even as to this*, he states *both* the mode represented by Mr. Leslie, and the other mode by means of the *final* letters referred to by the defender. But this I have still to explain.

On this ground, then, Mr. Leslie is *right*, that the *ancient* Hebrew alphabet contained only *twenty-two* characters, and that the numerals could only be expressed in those characters in the way he has stated in the Note.

But this is not all; for, 2dly, Even the Chaldaic, or modern Hebrew, contains only *twenty-two* letters; and it was only at a late period that the five *final* letters were added. There were varied forms of *five* of the twenty-two characters

previously in use, and employed to denote the ending of a word; and, after obtaining these five forms of letters, the Hebrews were no longer under a necessity of using the clumsy expedient of addition, of adding 100 to 400, and so on, in numeration, because they could then take these five final letters to denote the remaining 500.

At what period these five final letters were introduced, is not precisely ascertained. Nobody, I believe, maintains, that they were in use before the return of the Jews from the Babylonish captivity; and there is considerable reason to think that they were not known at the date of the Septuagint translation of the Bible into Greek, which happened in the first year of the reign of Ptolemy Philadelphus, king of Egypt, or between 272 and 283 years before the Christian era. In the opinion of Bishop Kennicot, the final letters were not known at that period. In translating the Prophecies of Zechariah, (c. ii. v. 11.) "*two* words, signifying, "*Thus the poor,*" (kim ani) have been run into one, in a way which could not have happened if the *final letters* had been then in use. It is impossible that this mistake could have been committed, if the interpreter had been aware of the existence of these five final letters in the language he was translating. I shall prove this to your satisfaction, by some of the best Hebrew scholars of the present day. Even if there were difference of opinion on such a point, it would be enough for this case, to shew, that Mr. Leslie was clearly entitled to state the matter in the way he did; and no one is entitled to say that he did so, or that he stepped out of his way in order to attack the Hebrew language, *merely because it was the language of Scripture*.

This libeller knew all this; for, Gentlemen, you see he refers to these five final letters; and he tells you they are used to express the five last hundreds. When were they so first used? Mr. Whiston, a celebrated character, in the Memoirs of his Life, tells us that it was about the beginning of the second century of the Christian era. He says, "That entire change which had been made in the character of the Hebrew Bible, from the old Samaritan to the new Chaldee, was not done by Ezra, as the modern Jews pretend, but by the Jews themselves, about the beginning of the second century of Christianity." Whether Whiston was right or wrong in this statement, is a matter of no consequence. This man, this libeller, knew that the final letters were never in the ancient Hebrew, and were of very late introduction

even in the Chaldaic Hebrew; and if he was so ignorant of the fact, or had not even looked at a Hebrew Grammar, his making these representations and charges against Mr. Leslie upon such grounds, only indicated his determination to throw obloquy on Mr. Leslie, without being at the pains to inquire into the grounds on which he founded it; and the libel was evidently intended for persons who had no knowledge to enable them to detect the error.

Observe, Gentlemen, there is only *one* notice taken of the Hebrew language, in the whole of this book; Mr. Leslie has made no other remark on the subject, and all he says is this: "The oriental nations appear generally to have represented the numbers as far as 1000, by dividing their alphabet into three distinct classes. But the Hebrew, the rudest and poorest of all written languages, *having only twenty-two letters*, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100." That is all he said; and I ask you, Gentlemen, if the fact be as I have now explained it to you, what fault has Mr. Leslie committed? Is he an enemy to the Bible, merely because he cannot say what is not true of the original language of Scripture, or that he does mention what he believes to be the truth regarding it

It is plain that, if he had said that the Hebrew alphabet consisted of *twenty-seven letters*, the libeller would have had a much better pretext for accusing him of gross ignorance, or for accusing him of neglect, in paying so little attention to the language of the Bible, as to state, with such evident incorrectness. If he had taken no notice of the Hebrew language in his book, what would the libeller have said? If Mr. Leslie had noticed the whole of the ancient languages excepting the Hebrew, and had taken no notice whatever of the Hebrew,—of that language in which the records of our holy religion, and of the most authentic history of the world, are written,—what would he not have said? Would he not have said that Mr. Leslie had avoided doing so on purpose, *merely because it was the language of Revelation?* Would he not have said, he notices all the other ancient languages, and leaves out this, merely to throw contempt on that language, because it was the language of religion? With this libeller no course would have been safe that Mr. Leslie could possibly have taken.

But it is said, that Mr. Leslie calls the Hebrew "the



rudest and poorest of all written languages." The libeller says, in this Mr. Leslie is wrong. But you will observe this is not said by Mr. Leslie of the language *generally*, but only in reference to one particular subject,—that of numeration. He says, "the oriental nations appear generally to have represented the numbers as far as 1000, by dividing their alphabet into three distinct classes—that is, the three nines. But, the Hebrew, the rudest and poorest of all written languages, *having only twenty-two letters*, could advance no farther than 400." These words "*having only twenty-two letters*," *qualify* what goes before. It is *in this respect*, that he speaks of the language as *rude* or *poor*. He says, it is the rudest and poorest of all written languages, *for the particular purpose of numeration* merely, and it is a mere perversion of the language of Mr. Leslie, to represent him as speaking thus of the Hebrew language, *in any other sense*.

Accordingly, this libeller finds it necessary to join issue with Mr. Leslie on this point, and to deny *the fact* that the Hebrew alphabet has only twenty-two letters, saying that it has twenty-seven. To that the witnesses will speak, by and by. That Mr. Leslie had no intention whatever of alluding to this poverty and rudeness of the Hebrew language, but in reference to this particular subject of numeration, I will shew you clearly by other passages in the book itself.

In the notes and illustrations subjoined to the work, (page 209,) he says, "Philosophers, misled by the hasty and careless reports of travellers, have generally much underrated the attainments of savage tribes in the art of numeration. From the mere *scantiness* of the terms which a *rude* people employs to signify numbers, it would, at least, be rash to infer the narrow range of their application. The language even of the most polished nations, when traced to its radical form, is yet found to betray *uncommon poverty* in *numerical* expression." Now, look at page 241, at the bottom, where he is speaking of another language; he writes thus: "In the *Ende* language, one of the dialects of the Flores, *four* is called *wutu*, and *eight* is denominated merely *two fours*. The *same poverty* is betrayed in the terms for the other digits. Thus, proceeding from *five* as the root, *six* is expressed by *five* and *one*, and seven by *five* and *two*."

And, Gentlemen, you will have observed in this Issue, that Mr. Leslie is alleged to have overlooked the poverty of

the *Roman* language. Gentlemen, Mr. Leslie does refer to the poverty of the Roman language. He says, in the introduction, at p. 11, "This beautiful system, (that of the Greeks,) was vastly superior in clearness and simplicity to the combination of strokes retained by the Romans, and transmitted by them to the nations of modern Europe. It was even tolerably fitted as an instrument of calculation, to *which the Roman numerals were totally inapplicable.*" Farther, he says at page 237 in the notes, "after the present numerals had been generally adopted, it was the practice throughout Europe to reduce the rules of arithmetic, like those of the Latin grammar, to memorial verses." He then gives a specimen of such verses, and adds,—“Such memorial verses are frequently met with in the older books of arithmetic, *evidently imitating the Latin grammars, which commonly delivered a mass of rules in rude and harsh metre,*—a barbarous practice, not yet entirely laid aside in our schools.” And then, there is another passage in the notes, at page 220, as to the Greek numerals, and also in reference to the poverty of the Roman language in respect to numeration. “Such is the beautiful system of Greek numerals, so vastly superior in clearness and simplicity to the Roman combination of strokes. It was even tolerably fitted as an instrument of calculation. Hence the Greeks early laid aside the use of the *abacus*; while the Romans, *who never shewed any taste for science,* were, *from the total inaptitude of their numerical symbols, obliged to practise the same laborious manipulation.*” Now, is it true, that any censure of Mr. Leslie can arise from this, as if he had not noticed the imperfection of the Roman language as well as the Hebrew, when both in the text, and in the notes, he animadverts on the clumsiness of the Roman, equally as on that of the Hebrew mode of notation.

In applying yourselves to the consideration of the first issue, it may be necessary to connect it with the third, and also with the fourth issues; but observe, Gentlemen, that in the third issue, the words used by the libeller are varied. It is not the language of the *Old Testament* that Mr. Leslie is accused of having attacked; but this libeller says, “I asserted that he did not know even a letter of the tongue he had the impudence to criticise, and I proved my assertion—I leave the decision of the question to any Hebraist, to any man of common sense in the land; I proved that he was actuated by a hostility to the language of *Revelation*,

*simply because it was so*, and I defy any one to refute me: And on page 6th, he calls it “the language of the *Bible*.” Now, considering it as the language of *Revelation* which is thus said to be attacked, Mr. Leslie, as you have seen in his book, was loud in his applause of the Greek language, in which a most important part of the Scriptures is written; and the malignity of the remark, in accusing Mr. Leslie of being an enemy to the language of *Revelation*, is manifest from what he has written in this book, in which you see him extolling and praising the Greek language, which is the language in which the most important part of the Christian Revelation was originally written.

But it is out of this single, and itself very simple remark, upon the Hebrew language, that the pursuer is virulently and malignantly accused of ignorance and impertinence, and of attacking the Hebrew language, merely because it is the language of the Bible. He is styled an *enfant perdu*, the rashest and most desperate of all adventurers, in defending a system of impiety and infidelity, and is accused of wilfully holding forth to the contempt of all the world the language of that holy religion, which we, as Christians, hold in reverence.

We now come to the *second* issue. This issue, Gentlemen, leads into discussions which are as little familiar to us as those we have now been engaged in. It begins thus, “The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew.” I shall say nothing, Gentlemen, of the contemptuous style of these expressions. The writer goes on, “By the way, on looking over the last number of Dr. Watt’s *Bibliotheca Britannica*, I have discovered, with amazement, that that celebrated personage was a poet in his youth:—why don’t you review his Phoenix Park, Killarney, &c.? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie’s monstrous plagiarism of his theory of heat, from an old volume of the Philosophical Transactions? For shame.”

Here, Gentlemen, we have a different subject, but still it is introduced in connection with a repetition of the former libel. Let us see how this libeller uses it. He accuses Mr. Leslie of wilful imposition on the philosophical world; and endeavours, by any little power he possesses, to deprive



him of that celebrity which he has so justly and honourably acquired.

Mr. Leslie had published a work upon the theory of heat in 1804. He was afterwards appointed the successor of M'Laurin and Playfair in the chair of mathematics in the University of Edinburgh—he had successfully prosecuted his studies and experiments, and for his experiments on heat, he got various medals, particularly from the Royal Society of London. In 1810, Mr. Leslie made a discovery of considerable importance, regarding the artificial congelation of water;—not a discovery of the *principles* upon which the experiment was founded, and the effect produced; but an *ascertainment of the power* of those principles, and of the *mode of applying them* to the purpose in view. For this discovery he was applauded all over Europe—he was, on the death of Professor Playfair, elected to the chair of Natural Philosophy in the University of this city, which had been successively filled by such men as Robison and Playfair; and he was soon after elected a member of the Institute of France, which, it is known, admits only *five* strangers into its body, in the physical department; and, although he was opposed by five candidates of acknowledged celebrity, yet when the votes were taken in the academy, on the 30th of October, 1820, Mr. Leslie was elected a corresponding member by a majority of thirty-three votes out of thirty-seven. The writer of this article, burning with jealousy over this account, calls Mr. Leslie's Discovery of his Theory of Heat, a *monstrous plagiarism*, and directly accuses him of a wilful imposition on the public.

This is a very strange charge,—that Mr. Leslie imposed upon the whole philosophers of Europe, and was universally applauded for a discovery as his, which the defender says stood recorded, in the year 1777, in the Philosophical Transactions of the Royal Society of London. This is utterly absurd and incredible. It cannot be believed for a moment. The papers recorded in these Transactions are as well known to the philosophical world as the Elements of Euclid. It is impossible to say they are not. Yet here you find a counter issue, in which the defender asserts, *and he must prove his assertions*, or fail on this issue,—“Whether the pursuer held himself forth as the author of certain discoveries in regard to freezing or artificial congelation, by means of evaporation under an exhausted receiver; he, the pursuer, knowing, or being aware, that the same or si-

milar discoveries were previously pointed out or described in a paper in the 67th volume of the Philosophical Transactions of the Royal Society of London, intituled, ‘ An Account of some Experiments made with an Air-Pump, on Mr. Smeaton’s Principle ; together with some experiments with a common Air-Pump. By Mr. Edward Nairne, F.R.S.’” The question is, Whether he can make out this issue. I am not qualified to state this matter to you in a scientific way, and, if I were, probably all of you would not understand it. But, having taken some pains to understand the subject in a common sense way, perhaps the explanation I may give may be of use to you in following the statements of these witnesses who will be examined. And, if I should fall into any mistake, it will be corrected by their more accurate explanations.

Mr. Leslie had previously invented a particular hygrometer, an instrument, the purpose of which is, to measure the degrees of moisture and dryness of air. It is an instrument now well known, and in universal use. He ascertained by it, that air became drier and drier as it became rarefied or divested of moisture ; and he remarked, that salt of tartar attracts moisture from common air. But in his experiments by means of the air-pump, in an exhausted receiver, he found that when the air became greatly rarefied, the salt of tartar began to give back moisture to the air. Observing this, he tried an acid, having a strong power of absorbing moisture from air. Sulphuric acid is a strong absorbent, though not hitherto well known in its effects under the receiver of an air-pump. Mr. Leslie expected that, by the action of the air-pump, the air would become drier and drier, till it reached a certain point, when the rarefaction being brought to a great height, the absorbent power of the sulphuric acid would cease, and it would give back the moisture to the air. But he found the reverse of all this. For, by his hygrometer, he ascertained that the dryness increased with the operation of the air-pump, while the moisture was absorbed by means of the sulphuric acid ;—the melted coating of the hygrometer immediately became white, and much higher degrees of cold were marked. Mr. Leslie immediately saw the consequences of this result. First, he saw that sulphuric acid was a powerful absorbent of moisture *in vacuo*, and that cold was produced by the dryness of air, and that, too, *without rapidity* in the process of evaporation. Formerly, though it was very well

known that cold might be produced by evaporation, it was the commonly received opinion that it was by the *rapidity* of the evaporation that cold was produced. The effect of this discovery was, that Mr. Leslie was enabled to freeze water, by means of the absorbent power of sulphuric acid applied under the exhausted receiver of an air-pump, and this *ad infinitum*; and ultimately, even to freeze quicksilver, which was never before done.

It must be evident to you, Gentlemen, from this description which I have given of Mr. Leslie's discovery, that all idea of plagiarism is destroyed, by the fact, that the result which Mr. Leslie obtained was different from what he had expected. He expected that the sulphuric acid would not carry on the dryness of the air; and yet he found that it went on till it produced all these consequences. He immediately communicated his discovery to others; he constructed an extensive apparatus at considerable expense, and repeated his experiments on a more extended scale. He wrote a statement of them to La Place, describing the process he had used, and the results obtained, which was read and entered on the Journals of the Institute. The experiment was performed successfully at Paris, and over all France and Italy. It was not so speedily performed with success in this country, because our chemists did not attend so minutely to the size and form of the vessels described by Mr. Leslie as was necessary. Sir Humphry Davy failed in the attempt to perform the experiment before the Royal Society in London from some cause of that nature, and Mr. Leslie found that doubts were entertained in London, when he went there, in the following summer, whether the experiment could be performed with success. He, however, exhibited it on a great scale in London successfully, and in very hot weather, and convinced every body that the discovery he had made stood on sound and fundamental principles.

The discovery being thus circulated and acknowledged all over Europe and America, Mr. Leslie's book, explanatory of it, was published in 1813; and surely it is scarcely possible now for any one to pretend, after the lapse of a period of more than ten years, that this discovery was not made by Mr. Leslie. But the defender thought he would deeply wound the character and feelings of the pursuer, by accusing him of plagiarism in this instance; and therefore he has said, that in an account given by Mr. Nairne of his experiments,



published in the Philosophical Transactions upwards of forty years ago, the same experiments were made by that gentleman.

Gentlemen, I have endeavoured to describe to you the nature of Mr. Leslie's experiment; and without any knowledge of chemistry, I think, at least, that I have a clear understanding of it. But I have in vain studied Mr. Nairne's account of his *experiments*, in reference to this question, which I confess I do not understand, and therefore shall not attempt particularly to describe to you. But the *object* of these experiments, was to explain the operation of a certain instrument, invented by Smeaton, called a pear-gauge, the purpose of which was to ascertain the exhaustion produced by means of the air-pump, and in that account of Nairne's, this libeller pretends to find Mr. Leslie's invention. In these experiments of Mr. Nairne, he found results which he declared he did not understand. In one of these experiments, he put sulphuric acid into the receiver of an air-pump. An absorption and dryness of air was the result, and the pear-gauge did not indicate that degree of exhaustion which he had expected would have been produced. But it is evident that he had not at all contemplated the production of cold in any one of these experiments with sulphuric acid. The second experiment was different. It was well known that ether, by means of evaporation, produces cold. Mr. Nairne put ether into the receiver of the air-pump; *but he applied no sulphuric acid*, and he used no absorbent power. And at the bottom of the receiver, he found two or three globules of ice. As I understand it, Mr. Nairne committed an evident mistake, in supposing that the *ether* was frozen; and that there must have been some drops of water, which was commonly put into the phial for carrying ether more securely, so as to prevent the escape of the air, and that it must have been this *water* that was congealed by the process of evaporation, a result which has always been known. But there being no absorbent power there, there were no means of *carrying on* the congelation, as in Mr. Leslie's experiment, where the absorbent power draws off the moisture, and thus the congelation is carried on *ad infinitum*, and would do so for ever, until the whole materials composing the water and the ice were drawn up and absorbed by the sulphuric acid.

These experiments of Nairne had been made before; *they were not new*. Dr. Black and Dr. Cullen had made

them repeatedly before, and they were very little attended to. Professor Robison wrote an article "Pneumatics," about the year 1798, in which he speaks of Mr. Nairne's experiments in these terms,—I refer to the article in the *Encyclopædia Britannica*, page 687. "The only obscure part of this account, is what relates to the composition of the matter which filled the pear-gauge before the admission of the mercury. It is not easy to see how the vapour of the receiver comes in by a narrow mouth, while the air is coming out of the same passage. Accordingly it requires a *very long time* to produce this extreme rarefaction in the pear-gauge, and there are great irregularities in any two succeeding experiments, as may be seen by looking at Mr. Nairne's account of them in the *Philosophical Transactions*, vol. lxxvii. Some vapours appear to have mixed much more readily with the air than others; and there are some *unaccountable cases*, where vitriolic acid and *sulphureous bodies* were included, in which the diminution of density indicated by the pear-gauge, was uniformly less than the diminution of elasticity indicated by the barometer gauge. It is enough for us at present to have established by unquestionable facts this production of elastic vapour, and the necessity of attending to it, both in the construction of the air-pump, and in drawing results from experiments exhibited in it."

Professor Robison sees no such discovery in Nairne as that made by Mr. Leslie. He states that Mr. Nairne's experiments are *obscure*, and his results *unaccountable*. Now, I ask this plain question, and which I hold to be decisive of this case. Did any body else do the thing before it was done by Mr. Leslie? Did any one, before this, freeze water *ad infinitum*, as he has done it? Did any one, before him, freeze mercury as he has done it? You have seen that they could not do it—that in this country the ablest chemists who tried it failed in the experiment, even after Mr. Leslie had pointed out the way, until he personally showed them how to do it. It must be unnecessary for me to say that Nairne saw no such result. It is true, that sulphuric acid absorbs moisture. It is true, that by the rarefaction of air cold is produced. But who will take upon him to say, that no discovery in science is made in the combining of these two principles? This would just be saying that no discovery in science could possibly be made. Every discovery in science is the result of a combination of prin-

ciples in nature, existing before, and which are known to be so, before the discovery is made. Neither Professor Robison, nor Professor Playfair, nor La Place, nor Dr. Brewster, nor any other philosopher, ever attempted to perform this experiment until it was done by Mr. Leslie.

Gentlemen, there is nothing new under the sun. The Copernican system, and the Newtonian system, are nothing more than a deduction of principles from known facts. From the falling of a stone, the principle of gravitation was deduced ; and after the discovery of America was made by Columbus, there were not wanting men to inform us, that this could easily have been found out, from attending to first principles. Gentlemen, it is always easy to entertain and to utter spiteful opinions, after a discovery has been made, and to say, that the principles which gave rise to the discovery were known before. I put it to you, Gentlemen, did this writer, this libeller, *did* MR. BLACKWOOD, *know it before?*

I submit to you, Gentlemen, that Mr. Leslie alone had clearly the right to claim the merit of this discovery. The malice of the article in the issue must therefore be obvious to every common reader. It is not an article of fair criticism in a work of science ; it is intended for further effect, —to lead to the conclusion, that Mr. Leslie, in claiming to be the author of this discovery, had practised *a gross and wilful imposition on the public*, and had claimed that as his own which he knew belonged exclusively to another.

The *third* issue, Gentlemen, to which we now come, is a second *collection* of the whole matters of attack against the pursuer ; and it is also a *particular* attack upon him, as it accuses him directly of *dishonesty*. I pray your attention, in the first place, to the separate particulars stated in this issue.

At the top of the 5th page of the issues—alluding to the second edition of the pursuer's "Philosophy of Arithmetic"—the writer expresses his surprise, that Mr. Leslie had not retracted the unlucky note, which this libeller says had convicted him of ignorance. He says, "As I am on the subject, I may remark, that I was at first a little surprised to find in the second edition of the Philosophy of Arithmetic, which was announced since I had pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of ignorance. But, on inspection of the work, my wonder ceased ; for I perceived that the new edi-



tion was nothing more than the old one, *with a fresh lying title page*, and a few additional leaves; in short, *only a collusion between an honest bookseller, and a doubly honest Professor, to impose on the public, and get rid of the remaining copies of an unsaleable work.* Here, then, is the vile offence against decency, as committed by me,"—and so forth.

Gentlemen, even the *words* here employed are intolerable. The word *lying* is introduced, and is directed against Mr. Leslie, in a public work—a word which is not even allowed to be made use of in judicial proceedings, and the use of which is unjustifiable in any circumstances. But what is the *substance* of the charge against the pursuer? It is that of *dishonesty*, in imposing upon the public, as a revised and improved copy, what was only an old copy of an unsaleable work. And here again, Gentlemen, the defender has put in issue, a plea in justification, which you will find at the foot of the 7th page of the issues, in the following terms:—"It being admitted that a book, intituled the '*Philosophy of Arithmetic*,' was published by the pursuer in the year 1820, and is described in the title-page as a second edition improved and enlarged, meaning thereby, that the said book, described as a second edition, was enlarged and improved, in comparison with the first edition of the said book:—Whether the pursuer, with the bookseller, in holding out to the public the book first aforesaid, as a second edition, enlarged and improved, *was guilty of a dishonest attempt to impose upon the public?*" That they *undertake to prove*, and they must show you, that it was, on the part of the pursuer, Mr. Leslie, A DISHONEST ATTEMPT TO IMPOSE UPON THE PUBLIC.

Gentlemen, to entitle a publisher to call a book a second edition, it is not necessary that the whole of the first edition of the work be reprinted. Dr. Johnson defines an "*edition*" to be, "*publication of something, especially a book.*" He calls a "*new edition*" of it "*republication generally, with some revisal and correction;*" and nobody knows this better than Mr. Blackwood, that a publisher sometimes throws off a large number of copies of a book from the first impression, only a small part of which may be sold, and then the book is returned to the author, or it may remain in the hands of the bookseller; the author makes such alterations upon it as he thinks necessary, and then the remainder of the work goes forth to the public, and is sold as a se-

cond edition. But, Gentlemen, you will remark here, in Mr. Leslie's work, that there are a variety of plates and figures used throughout the work, in almost every page of it, of a very unusual and valuable description; that these plates were quite useless for any other purpose, and that a great loss, both of time and expense to the author would be sustained, if they required to be renewed for a second edition, should the first edition speedily run out, from the small number of copies thrown off; and, therefore, in such cases, it is a common and established practice to throw off a large number of copies at the first, reserving to the author his right to revise and alter the copies which may remain unsold, and to republish them as a second revised and improved edition of the work.

Gentlemen, in this case, no fewer than 900 copies of Mr. Leslie's Book on Arithmetic were sold before it was considered necessary to put forth a second edition. Now, you will observe, that Mr. Leslie materially altered and improved this second edition; and when I was reading to you a passage from the notes, I think I heard the other party say, "O, that is only to be found in this *second* edition," so that it is reasonable to suppose, that something material is to be found in the second edition which was not in the first. In point of fact, it was necessary that a second edition of the work should be announced, in order to give to the public full notice of the material additions and alterations which had been made. It became necessary to print considerable additions to the book, and you will see, on looking at it, that, from page 240, to the end, this *second* edition contains 18 pages of entirely new matter, more than is to be found in the first edition. But this is not all; you will please attend to the words of the issue which charges the pursuer with being guilty of collusion with a bookseller to "*impose upon the public*, and get rid of the remaining copies of an unsaleable work." What does this mean, but that the pursuer was guilty of imposition upon the public, by selling to them as an improved edition, what was not so? Mr. Leslie did not do this; a large table of quarter-squares was added, besides other valuable matter; and, in the preface to this second edition, I pray you to observe what he himself says of it. He says, "In this edition I have introduced considerable improvements, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made consists in

the table of quarter-squares, near the end of the volume, which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves." Here, Gentlemen, Mr. Leslie tells the public what the alterations are which he did make; and is it to be tolerated, that Mr. Blackwood should say that he did nothing more than publish the old edition, with *a fresh lying title page*, and *a few additional leaves*, and was guilty of *collusion* with an *honest* bookseller—(by *honest*, he tells you elsewhere he meant *dishonest*,) and practised a *dishonest attempt to impose upon the public*?

Gentlemen, there is a part of this third issue which the other party seems disposed to treat very lightly. I am very much mistaken, indeed, if it appears so to you. After alluding to the Edinburgh Review, and questioning the inspiration of that worthy oracle, this libeller says, "And, as to the Professor's own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken Leslie the Reviewer, to some enormous overfed pet of the parrot species, stuck up at a garrot window, and occupied all day with saying 'pretty poll, pretty poll,' to itself. 'Foul witch, foul witch,' to every passer by.—Look *now*, I beseech you, at his article on the North-West Passage!!!"

Gentlemen, you see it is impossible to read this passage, even after it has been read and re-read, without producing laughter at the expense of the pursuer, Mr. Leslie. (The learned Gentleman here referred to the risible sensations produced in the Court at his reading of this passage.) And, however this libeller may take it, it is a wicked and malicious attempt to turn Mr. Leslie into ridicule, and which we conceive affords to him a good ground for claiming damages against the defender.

Gentlemen, here is a justification also attempted from page eight to the end of the issues, as being matter of *fair* criticism upon Mr. Leslie's writings. What the defender will attempt to prove under this issue I know not. I must leave it to him to tell you what he will try to do; and whether all that he can possibly prove, or state to you, will be any justification of this attack on the pursuer, I leave it to you to determine. We call upon the defender to prove this issue, and if he lead any proof, which I hardly think he shall do, my brother, Mr. Jeffrey, will remark on that proof, in a much abler manner than I could pretend to do.



I may be permitted, however, to make one observation here. A reviewer in a periodical work is not intended to be known, and the public seldom inquire who is the writer of the articles that appear in the work. And when a person sits down to write in such a literary work, it is manifest, that if he writes upon and criticises a subject in which any thing material has been done by himself, he cannot write in an unknown or concealed character, without noticing himself in his critique upon the work, because any attempt to take no notice of himself, or to affect any modesty in his criticism upon the author of the publication under review, would lead immediately to the conclusion that the critique was written by himself, and the public would see through the disguise, which is a thing that is not intended in the publication of such works. Even if they should prove that the pursuer, Mr. Leslie, did write and compose any part of the Reviews noticed in this counter-issue, (and I think it will be very difficult for them to do so,—however they may try their hand,) it will be very easy to account for it, without imputing it to vanity and absurdity on the part of the pursuer.

I have another remark to make here. Mr. Leslie is accused of making an ignorant attack upon others, for not using the instruments he invented. In the passage quoted in the issues, at the foot of page 9th, no attack will be found. It is there said, merely,—“M. Humboldt laments that he had not an opportunity of trying, within the tropics, the photometer with which Mr. Leslie has enriched our philosophical apparatus. We heartily join him in that feeling, but we regret still more that he had not employed the hygrometer which the same philosopher had constructed,” &c. It is only here said that the writer regrets Mr. Leslie's instruments were not in the hands of M. Humboldt, at the time of making his observations; but there is no attack made on any one.

Holding, then, these assertions to be as false as the rest, you will attend to the relevancy of this issue. Is it possible to disguise for a moment, that the object of the passage in this fourth issue was to ridicule the person of the pursuer, Mr. Leslie, and to raise a laugh at his expense, and to render him contemptible in the eyes of the world? This is undoubtedly a relevant ground of charge, upon which the pursuer is entitled to call for damages; and to prove this, I will read to you a few passages from Holt's book on the English law of libel. That author has a whole

chapter in which he treats “OF LIBELS WHICH EXPOSE A MAN TO RIDICULE, SCORN,” &c. &c. In the beginning of that chapter, at page 210, he says,—“The next class of libels is that which, by holding up a man to scorn and ridicule, and, still more, to any stronger feeling of contempt or execration, impair him in the enjoyment of general society, and injure those imperfect rights of friendly intercourse and mutual benevolence which man has with respect to man.” Then he has another passage, which I need not read to you, as it relates to a technical distinction of the English law, not recognised in the law of Scotland. And then he says, (page 213,) “As every person desires to appear agreeable in life, and must be highly provoked by such ridiculous representations as tend to lessen him in the esteem of the world, and, by the sure effect of ridicule, to cast a shade upon his talents and virtues, it has been holden, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libellous, but also such as set him in a *scurrilous* and *ignominious light*; for these reflections equally *create ill blood, and provoke the parties to acts of revenge, and breaches of the peace.*”

A JURYMAN.—Be so good as read the passage which you have omitted.

LORD CHIEF COMMISSIONER.—Mr. Moncrieff, I do not stop you from reading from Mr. Holt’s book, by way of illustration of your argument; but it would be much better to state the point as established in your own law.

Mr. MONCRIEFF.—I refer to it merely in illustration. The passage which I omitted to read, explains the difference between words *spoken* and words *written*, a distinction not known in our law, so that it can be of no use to read it here. The author continues: “Every thing, therefore, written of another, which holds him up to that scorn and ridicule that might reasonably (that is, according to our natural passions) be considered as provoking him to a breach of peace, is a libel.

“And, in the same manner, all such written abuse as may be fairly intended to impair him in the enjoyment of society, or to throw a contempt on him which might affect his general fortune and comfort, is a positive injury, and therefore the subject of an action on the case.

“*Scandalous matter is not necessary to make a libel.* It is enough if the defendant induce an ill opinion to be had

of the plaintiff, or to make him contemptible and ridiculous."

In another passage he says,—“ In a larger sense, the notion of a libel may be applied to any defamations whatever, expressed either by signs or pictures, as by fixing up a gallows against a man's door, and by painting him in a shameful or ignominious manner.”

Again: “ In a special action on the case, the plaintiff declares that he is a hackney-coachman; and the defendant, with intent to disgrace him, did ride to Skimmington, and describes how; thereby surmising that his wife had beaten him, and by reason thereof, persons who formerly used him, refused to come into his coach *ad damnum*.—Upon not guilty, it was found for the plaintiff.”—“ So carrying a fellow about with horns, and bowing at B.'s door.”

Then he quotes at page 216, the following case: “ In *Villars v. Monsley*, it was holden, that an action would lie for publishing any thing in writing, which tends to render another ridiculous. “ This was an action upon the case against the defendant, for maliciously writing and publishing a libel upon the plaintiff, in the words following, viz.

“ Old Villars, so strong of brimstone you smell,  
As if not long since you had got out of hell,  
But this damnable smell I no longer can bear,  
Therefore I desire you would come no more here;  
You old stinking, old nasty, old itchy, old toad,  
If you come any more, you shall pay for your board,  
You'll therefore take this as a warning from me,  
And never more enter the doors, while they belong to J. P.”

The defendant pleaded not guilty; but a verdict was found for the pursuer. The imputation cast upon Villars in this libel was, that he had the *itch*, which was not true, and the libel consisted in *holding him up to laughter and ridicule*.

Such examples are important in this view. The other party will tell you, that all they wrote of the pursuer was *fair* discussion and criticism of his works as an author. I ask you, if the passage referred to in the issues is a *fair* criticism on the pursuer's works; or rather, is it not a *contemptible digression from the object of fair criticism, in order to ridicule the person of the pursuer*? No, Gentlemen, it bears no marks of *fair* criticism. It shews the malicious nature of the whole publication, and that its main design was to hold up to ridicule the person, and to destroy the comfort



and character, of Mr. Leslie, as an individual, an Author, and as a Professor.

After this, the libel in the fourth issue goes on to ridicule *all* Mr. Leslie's pretensions, whether in mathematics or in other branches of science. Mr. Leslie's character in mathematical science are well known. He published a book on the subject, which is here, as usual, treated with contempt; but of which no fewer than 5000 copies were sold before the year 1809; yet this libeller has stated that it had no merit—that it did not contain an original mathematical fact of the smallest value—that he had failed in proving his first proposition, which was the foundation of his system—and that it contained a thousand such *betises*.

Gentlemen, I have now gone over the whole of these issues, excepting *the last*, which you will find at page 6th, in the following words: “ With grief I have perceived that many of the young men who go from this country to Edinburgh, to pursue their medical studies, come back with *their religious principles perverted, and their reverence for holy things sneered away*. It would be very unjust to accuse any *individual* of this weighty charge; *but the fact is undeniable*. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to shew, that the *lights of the famous Northern Sect are not infallible*;—that *under affected knowledge, gross ignorance may lurk*;—and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice, also, but much more sincerely, to learn that a better spirit is arising in your famous University; and, in spite of its levity, its humours, its follies, nay, even its transgressions, I think your Magazine has been instrumental in this good work.”

To judge of this correctly, I beg you will look to the first and third issues; and you will observe, what is very material, that the libellous matter quoted in the third and fourth issues are *the same article in direct sequence*, without interruption; the words at the bottom of the first paragraph immediately precede those at the commencement of the next in the libel itself. There is no break—there is no interruption, or intervention of other matter, and there is no individual alluded to but the pursuer. The first, the third, and this last issues, are all founded on the single fact of the remark made by Mr. Leslie on the Hebrew language, which we have already considered. For that single re-

mark, the pursuer, Mr. Leslie, is accused of attacking the language of the Scriptures, merely because it is so. In the third issue, the libeller says, "In a work of his, treating on arithmetic, that "celebrated" man (another sneer at the pursuer) thought proper to *revile*, in a most dogmatic and insulting way, the Hebrew language. I asserted that he did not know even a letter of the tongue he had the impudence to pretend to criticise, and *I proved my assertion*. I leave the decision of the question to any Hebraist, to any man of common sense in the land. I *proved* that he was *actuated by hostility* to the *language of Revelation*, *simply because it was so*, and I defy any one to refute me." The charges of *dishonesty* are then interspersed throughout this issue; and then comes the conclusion, in these terms: "A man who would go out of his path, on an inquiry on the nature of heat, to *recommend an impious work*; and, in a Treatise on Arithmetic, to cast an ignorant sarcasm on the *language of the Bible*, or to *sneer at the fancies of one of the Apostles*, must ever be an *object of suspicion to those who hold the Scriptures in honour, and impiety in detestation*. We have no assurance that he may not digress as culpably hereafter, and if he does so, it is only fair to give him warning that I shall take care to point it out."

Gentlemen, these charges are FALSE, *every one of them*; and, with regard to the one which I have not spoken to yet, "to sneer at the fancies of one of the *Apostles*," it is not the fact—*there is no such thing in the book*. I refer you to the only passage which can possibly be alluded to, which you will find in page 229: "But it would be endless to recount all the visions of the Pythagorean school; nor should we stop to notice such fancies; if, by a perpetual descent, the dreams of ancient philosophers had not, in the actual state of society, still tintured our language, and mingled themselves with the various institutions of civil life. The mystical properties of numbers, originally nursed in the sombre imaginations of the Egyptians, were eagerly embraced by the Jewish cabalistical writers, and afterwards implicitly adopted by the Fathers of the Christian church. But those fancies maintained an ascendancy in public belief until a very late period; nor were the reformers themselves exempt from their influence."

The words here used are the "*Dreams of ancient philosophers*;" and the "*Fancies*" Mr. Leslie speaks of, are

those of the Pythagorean school, which were embraced by the Jewish cabalistical writers, and afterwards adopted by some of the *Fathers* of the Christian church; *not of the apostles; of St. John*; and so forth; there is no mention made in the passage of "*an apostle*;" the expression is, "*The Fathers* of the Christian church." And you know that we only acknowledge the Fathers of the church, on account of their reputation and authority as learned men, and as explaining difficult or obscure passages, in the doctrines and in the moral precepts of the Scriptures. There is no *sacredness* of character in the case, and there is no doubt that their opinions, like those of other men, were affected and tintured by the doctrines of the philosophers of the previous ages.

There is in this passage an allusion to the number of the beast, the number 666. But it is merely an *arithmetical* allusion. Mr. Leslie says: "Luther, whose vigorous mind was yet deeply tintured with the credulity of his age, was accustomed to venerate certain numbers with a species of idolatry. Peter Bungus, canon of Bergamot, published, in 1585, a thick quarto, *De mysticis numerorum significationibus*, chiefly with a view to explain some passages in the Old and New Testament. The famous number of the beast, 666, which has so often tortured the ingenuity of the *expounders* of the Apocalypse, is regarded by some divines as of Egyptian descent, the archetype of the three monads, and combining the genial and siderial powers; being indeed only the sum of all the terms of the magic square of 6, the first of the perfect numbers, and dedicated to the sun. But we still see the predilection for Luther's favourite number, *seven*, strongly marked in the customary term of apprenticeships, in the period required for obtaining academical degrees, and in the legal age of majority."

Is there any thing here to justify the assertion that Mr. Leslie *sneered at the Fancies of the Apostles*? The charge is false, and most injurious to the pursuer. And now, Gentlemen, see what this libeller says in this last issue, which is a direct continuation of the preceding. "With grief I have perceived, that many of the young men who go from this country to Edinburgh to pursue their medical studies, come back with their religious principles perverted, and *their reverence for holy things sneered away*; it would be very unjust to accuse any *individual* of this weighty charge; *but the fact is undeniable*." Gentlemen, these



words are continuous; they succeed each other without interruption. There is no justification attempted of this issue; they only say it does not apply to the pursuer, Mr. Leslie. Do they expect to convince you twelve gentlemen that it was not meant to apply to the pursuer? If they do, I hope they will be mistaken. Their plea for Mr. Blackwood is substantially this,—He says, You, Mr. Leslie, have a pique at the language of the Bible, and you attack it merely because it is the language of Scripture: You are a member of an infidel sect: You are an *enfant perdu*, the most desperate of all desperate defenders of an impious system: You are actuated by a spirit of hostility to our holy religion: You go out of your path to recommend an impious book: You sneer at the fancies of the apostles: You cast an ignorant sarcasm on the language of the Bible, merely because it is so: You are an *object of suspicion to those who hold the Scriptures in honour, and impiety in detestation*: You are a *professor in the University of Edinburgh*: And, “*With grief I have perceived that many of the young men, &c. come back with their religious principles perverted, and their reverence for holy things sneered away.*” But don’t think I mean you, Mr. Leslie.—Oh no, far be it from me to impute such things to you!

- Nothing more is wanted to point out clearly the meanness and the malice of this attempt on the part of this libeller. No affected disguise of this kind can conceal the real scope and meaning of the statement, taken in all its bearings and connection. The defender himself has furnished a plain instance of the manner in which such words are to be construed. Be pleased to look at the third Issue; the pursuer is there called a “*doubly honest* Professor.” Now see how they translate this word “honest” in their second counter Issue, which is in these terms: “Whether the pursuer, with the booksellers, in holding out to the public the book first aforesaid, as a second edition enlarged and improved, was guilty of a *dishonest* attempt to impose upon the public.” Every body understands the meaning of these words. The words “*doubly honest*” applied to the pursuer, means “*doubly dishonest*.” We all know it is quite possible to describe a man who is a *thief* by calling him an “*honest man*,”—to describe a *liar*, as being a “*lover of truth*.” All this is quite common. The meaning of words depends entirely upon their connection, and the way in which they are used; and you must say, on

your oaths, as jurymen, and men of common sense, whether you can doubt that the writer of these words meant and intended them to apply to Mr. Leslie.

The words of the libel are: "With grief I have perceived, that many of the young men who go from this country to Edinburgh to pursue their medical studies."—Reference is here made to the young gentlemen studying *medicine*, and the defender says, this does not allude to Mr. Leslie, who is not a Professor of medicine. But, observe, that the author pretends to write from a distance—from Ireland. It is well known that by far the greater number of the young gentlemen who come from Ireland to this country, come for the purpose of studying medicine, and it is known that the Natural Philosophy Class, of which the pursuer now fills the chair, includes Chemistry and other branches of material importance to the medical student, and that many of the students of medicine do attend the Natural Philosophy Class. There is no possibility of denying this, and when this libeller speaks of the medical students, he simply refers to the great body of the students who attend this University from a distance.

I would ask Mr. Blackwood, who now stands here as the author of this article, who else was meant by him, if it was not the pursuer. He must know who it is he means, for he says he will watch him to see that he does not digress again. Will he say that it was Dr. Gregory, Dr. Hamilton, Dr. Duncan, or Dr. Hope; or any of the Professors in that department. No, no, he won't pretend any such thing; he has alluded to nobody else. But how will his sentence read; even taking it as not referring *exclusively* to Mr. Leslie? It would be very unjust to accuse any *individual* of this weighty charge—(it is material to observe, Gentlemen, that this word "individual" is in italics in the libel,)—but *the fact is undeniable*, that the religious principles of the medical students are perverted, and their reverence for holy things is sneered away; but I do not allude to *one* individual; not to you, Mr. Leslie, solely; but you are one of the Professors of this University by whom the principles of the students *are perverted*, and their reverence for holy things *is sneered away*; and you, Mr. JOHN LESLIE, sneer at the fancies and dreams of the apostles of our holy religion, and you attack the language of the Bible, merely because

it is the language of religion,—and therefore you must bear your share of this weighty charge.

But there is more than this. This libeller goes on thus,—“ I rejoice, *therefore*, whenever it is in my power, even in the most trivial degree, to shew that the lights of the famous Northern Sect are not infallible—that under affected knowledge, gross ignorance may lurk—and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality.” And then he says, “ I rejoice also, but much more sincerely, to learn, that a better spirit is arising in your famous University,” to which, he says, “ Blackwood’s Magazine” has greatly contributed.

Thus, you see, after a general averment, that the religious principles of the youth are perverted, and their reverence for holy things is sneered away,—he takes credit to himself for pointing out Mr. Leslie’s errors, and Mr. Leslie’s hostility to religion, as an effort calculated to repress or lessen the mischief,—and he draws the conclusion from this to which I have just been speaking. I do not know what defence, on this point, he may attempt. But if any attempt be made to *deny* that the passage had truly a reference to Mr. Leslie, such a denial will only serve at once to fix the character of the libel as of such a nature, that the party, from conscious wrong, dare not avow what to all the world must appear to be its plain and obvious meaning; and to stamp it as equally distinguished by its meanness, as it already is by the malice from which it too plainly proceeded.

I deny that what this libeller here asserts to be a certain fact has any truth in it; I deny that the youth who attend our University have their religious principles perverted, and their reverence for holy things sneered away by its learned Professors. That never was the character of the University, or of the people of this country, and I hope it never will be so. I deny that its Professors are grossly ignorant and intolerant, and I trust they never will become so. And, if any such impressions have gone forth, and been generally believed, of the Professors of our University, I do assert, that it is to Mr. Blackwood, and such libellers as him, that this is to be ascribed.

If I believed that any such evil existed, I can assure you that I should be the last person to create any bar or interruption to the just exposure of it, in a proper place or manner. I deny that it exists. But, even if it did, it is not



by such libels as this that it is to be put down or removed. Is it to be imagined that the religion of *peace* and *charity* is to be established and sustained by a system of *malignant calumny*? No, no. The character of these libels is too plain to be disguised under such hypocritical artifices as this. And if any thing could aggravate the evident personal malice of the writer, it is the attempt to cover it by the *pretence* of zeal for religion and for the safety of the principles of the youth.

Gentlemen, the interests of Mr. Leslie, and of the University of this city, are deeply involved in such statements. If the guardians of families place any value on the *souls* of their children or pupils, and if they give any credit to the false assertions of the defender, they will not allow them to come to this seminary if such charges as these are suffered to pass unnoticed.

One word as to damages, and I have done. The pursuer demands damages from you, for false, continued, unjust, and malignant calumnies. It is common to say, that a pursuer in the station and rank in life which Mr. Leslie holds, does not seek damages in order to enrich himself at the expense of the defender. No, Gentlemen, neither does Mr. Leslie; but my client does ask, at your hands, that, by the amount of the damages you may award him by your verdict, you shall mark to the public the sense you entertain of the calumnies that have been directed against him; and the value you attach to his character as an instructor of youth, and a man of honour and principle. And by your verdict he trusts you will convince Mr. Blackwood, and those who have abetted him in his career of calumny, that if they will take up that trade, which Cicero so aptly describes as "*Calumniæ quæstus turpissimus*," they must take it with the burden of giving *full* reparation of the injuries inflicted on individuals. And that, in thus doing justice to the pursuer, you will do what in you lies to put down that system of detraction, of which we have lately seen so much; and which has been justly described by a learned judge of this Court, (Lord Pitmilley,) as being of such a nature as, come from whom it may, and from whatever side or party, must always be deplored by all sober-minded men.

Mr. JEFFREY.—We now put in evidence the documents which have been admitted by the parties, namely, the num-

bers of the Magazine, being the thirty-fifth and forty-fourth, and the first and second editions of Mr. Leslie's book on the Philosophy of Arithmetic. We also put in Bishop Beveridge's Chronological Institute, and the two Hebrew Grammars of Dr. Wilson and Mr. Joseph Frey. Next, we put in the defences for Mr. Blackwood in this process.

LORD CHIEF COMMISSIONER.—If there are any particular passages in these works, Mr. Jeffrey, which you wish read, let it now be done. If the other party, in like manner, wish to have any part of them read, this is the time for doing so.

MR. JEFFREY.—I shall only trouble your Lordship and the Jury with reading a passage or two from Mr. Blackwood's Defences. I particularly refer to the passage towards the bottom of the fourth page, in which the defender says, "The good taste and propriety of the language in the passages referred to, the defender is not bound to maintain or defend in a court of law, but he distinctly asserts, that all the remarks in which the epithets and phrases contained in the summons occur, are completely within the bounds of fair and free discussion, and are supported by such facts and circumstances, and by such extracts from the pursuer's publications, as completely to exclude the charge of unwarrantable and unprovoked attack."

I read likewise the passage at the top of page 5th, where it is stated, "If the publications of the learned pursuer all afford such foundation for the charges of which he complains, as to exclude the pretence of malice, and to bring these remarks within the pale of free criticism and discussion, then there is no calumny, and there is no ground of action."

I read, likewise, the concluding part of the defence, where it is stated, "The alleged ignorance even of the alphabet of the Hebrew language, which the learned pursuer, in a scientific work, *went out of his way* to describe as 'the rudest and poorest of all written languages,' is not denied in the summons, and cannot be disputed. Is there any ground of action for alluding to such an instance of ignorance; or is the remaining part of the above passage actionable; or is it not the exposure of literary *imposition* and *unworthy trick*, by which the public is protected, and

which it is one of the legitimate duties of true criticism to make."

The pursuer then called the following witnesses in support of his case:

#### EVIDENCE FOR THE PURSUER.

Rev. DAVID DICKSON, one of the Ministers of St. Cuthbert's, *sworn*.

Mr. JEFFREY.—Mr. Dickson, you are one of the Ministers of St. Cuthbert's?

A. I am.

Q. Have you attended to the study of the Hebrew language?

A. I have, somewhat.

Q. You look upon yourself as having acquired a competent knowledge of that language?

A. I do, in many particulars.

Mr. JEFFREY.—The information I want does not go deeply into the subject, it only refers to the Alphabet.

Q. Mr. Dickson, were you a candidate for the Hebrew Chair on occasion of the late vacancy?

A. I was.

Q. Has the Hebrew language, in the opinion of the learned, always had one character?

A. It has not.

Q. What is the original character?

A. The received opinion is, that what is called the Samaritan, or old Phenician character, is that in which the Scriptures were originally written.

Q. Were they one or two characters?

A. Two characters.

Q. How many letters or characters does the Samaritan alphabet contain?

A. Twenty-two.

Q. Is that its whole complement?

A. The whole.

Q. Does it contain no additional characters, or finals, as they are termed?

A. None, so far as I have observed.

Q. Are you acquainted with a chronological work by Bishop Beveridge?



A. I am perfectly acquainted with it as a book of authority, and since this question was agitated, I have looked into it, and have derived considerable information from it.

Q. Were you aware that the Hebrews used the letters of that alphabet to express numbers?

A. I cannot say that I am.

Q. In the body of the Scriptures I understand the numbers are always given in words?

A. They are always given in words.

Q. Look at the bottom of that page. What numbers are these?

(Bishop Beveridge's book was here handed to the witness.)

A. They are Samaritan characters, showing how they marked numbers.

Q. If the letters of the alphabet be used for the expression of numbers, the *ancient* Hebrew alphabet would not, I presume, go farther than 400?

A. It is impossible that it could do so.

Q. Explain the characters used by the Samaritans, as given in Bishop Beveridge's book, at page 212, and be so good, in the first place, as to explain the meaning of the Latin quotation at the bottom of the page?

A. "According to the Samaritan, or ancient Hebrew alphabet, as having no final letters, all the numbers are constantly expressed in this manner."

Q. Be so good as explain how these are expressed?

A. Up to nine, the letters are used as units, the next nine are the tens; then there are four remaining, the first eighteen being exhausted by the two series I have mentioned. Of the four letters remaining, the first is used as 100, the second for 200, the third for 300, and the fourth for 400; and thus there were no additional letters to express 500, without some farther complication of signs, and therefore the mode adopted was by taking the letter denoting 400, and the letter expressing 100, to make up 500—for example, I shall take the Chaldaic characters. The letter Koph signifies 100; the letter Resh, signifies 200; the letter Schin, 300; the letter Tau 400. The mode of expressing 500 by the ancient characters, was thus:  $\text{Tau} = 400 + \text{Koph} = 100 = 500$ , and so on.

א 1	מ 10	פ 100
ב 2	נ 20	צ 200
ג 3	ז 30	ק 300
ד 4	ח 40	ל 400
ה 5	ט 50	פא 500
ו 6	י 60	צא 600
ז 7	כ 70	מא 700
ח 8	ל 80	&c. &c.
ט 9	מ 90	

Q. Have you seen the note in Mr. Leslie's work on the Philosophy of Arithmetic, which is referred to in this case?

A. Yes, I have.

Q. Is that the same with what you saw?

A. Precisely the same.

Q. You have already mentioned in this case, that the ancient Hebrew was written in what is called the Samaritan character—in modern times—in our own times, what is it named?

A. The Chaldaic.

Q. When were the Chaldaic characters introduced?

A. It is generally understood, immediately subsequent to the Babylonish captivity.

Q. How many letters has the Chaldaic alphabet: I mean letters expressing sounds?

A. Twenty-two.

Q. Some are written in a double form, I mean such as with us are used in the middle and end of a word?

A. They are.

Q. How many of these are there in the Chaldaic alphabet?

A. Five; and these are used for the ending of the words.

Q. Therefore the Chaldaic, or modern Hebrew alphabet, contains twenty-two letters as to sound, and twenty-seven as to character?

A. Yes.

Q. And you think these five final letters were introduced into the alphabet after the Babylonish captivity?

A. Yes.

Q. Has it been a subject of dispute among the learned,

whether this change upon the Hebrew alphabet took place before, or after the Christian era?

A. I am not aware that there has been any great difference of opinion on the subject. If there is any difference, perhaps it does not exceed 100 years.

Q. Is it a matter of received opinion, that these five forms of final letters were always used, or is it supposed that they were added at a later period?

A. They are supposed to have been added at a later period.

Q. Is it settled when, or about what period, they were so added?

A. It is uncertain when, but the received opinion is, that it was subsequent to the introduction of the Chaldaic character.

Q. Are there many eminent Hebrew scholars that maintain the opinion that the final letters were not introduced at the time of the translation of the Septuagint into Greek?

A. Yes, among others Dr. Kennicot. Dr. Kennicot, however, does not refer to the Septuagint translation in general. But he says that if the Septuagint translation of the prophecy of Jeremiah was executed, as it is believed to have been, about 140 years A. C. the final letters were certainly not used in the MSS. from which that translation was made. In regard to Jeremiah, Kennicot refers to his Dissertation on the Sacred Text, which I have not been able to procure. I have, however, compared the Hebrew of a passage in Zechariah to which he also refers, with the Septuagint, from which it is perfectly evident, that the final letters were not used in it\*.

Q. Therefore Doctor Kennicot was of opinion, that these final letters were not in general use 140 years before Christ?

A. Yes.

LORD GILLIES.—Ask the witness his opinion of Bishop Kennicot.

Q. Are you of opinion that Bishop Kennicot is right in the opinion he gives on this matter; do you concur with him?

A. I do: and he states distinctly, that in the most ancient MSS. which he compared and collated, there were not any final letters existing.

\* The passage referred to is Zechariah xi. 11.



**THE LORD CHIEF COMMISSIONER.**—You have stated that the final letters in the Chaldaic characters, by which I understand you to mean, letters used in the end of words, in a similar way to our small *s*, were introduced somewhat earlier than the period of the Christian era. Be so good, Sir, as state that over again. How much earlier was it?

**A.** Somewhere about 200 years before the Christian era.

**MR. JEFFREY.**—Mr. Dickson, you have seen that note of Mr. Leslie's about the Hebrew mode of notation?

**A.** Yes, I have.

**Q.** Now, I ask you; does it, in your opinion, indicate an entire ignorance of the Hebrew alphabet?

**A.** Unquestionably not,—of the mode of numeration by letters.

**Q.** Then you consider, that that remark of Mr. Leslie's does not state any thing different from the fact?

**A.** Certainly not.

**Q.** Now Sir, look at the context—would you understand, taking the scope of the whole passage into view, that Mr. Leslie there meant the *ancient*, or the modern Hebrew?

**A.** Unquestionably the ancient. He says the "*Hebrews*," not the modern Jews.

Cross-examined by **MR. FORSYTH.**

**Q.** You have said, Sir, that you are acquainted with the Hebrew language. You have said that it was expressed in different characters—the ancient Samaritan, and the Chaldaic, and that these two are different from each other?

**A.** That is the received opinion.

**Q.** What books are considered as existing in the ancient Samaritan character?

**A.** The Pentateuch, or the five books of Moses.

**Q.** Have you seen any other?

**A.** I have not seen them, but I have seen extracts in the Samaritan character.

**Q.** But you have seen no books in it?

**A.** I have seen none.

**Q.** In what character are the Scriptures written which have come down to us?

**A.** The Chaldaic, or what is called the Hebrew.

Q. What do the General Assembly mean by the Hebrew language, when they order students to be instructed in it :—Do they mean the Chaldaic or the ancient Samaritan ?

A. They mean the Chaldaic character certainly, not the Samaritan.

Q. Now Sir, this Hebrew, or what we call the Hebrew or the Chaldaic language, that is the character, is it not, in which all the books in the Old Testament are written ?

A. Not exactly, there are some parts in Ezra and Daniel written in the Chaldaic language.

Q. Then, with the exception of those which you have now mentioned, Ezra and Daniel, the whole of the Scriptures are written in what is now called the Hebrew, both New and Old ?

A. Yes.

Q. Do you know the character of the modern Hebrew ?

A. I do, but not their mode of numeration.

Q. But you know the modern Hebrew ?

A. Yes.

Q. Now, in speaking of the modern Hebrew, you have said, that the time when it was introduced was somewhere about the time of the Babylonish captivity, or immediately subsequent to it ?

A. Yes.

Q. How long did that captivity last ?

A. Seventy years.

Q. When did it terminate ?

A. Above 400 years before the Christian era.

Q. In what we call the Hebrew language *now*, what is the mode of notation in use by the twenty-two letters which we find in the 119th Psalm ; and in regard to the five final letters, what is the mode of notation used in the Hebrew character ?

A. Exactly the same as in the Samaritan, as to the twenty-two first letters, which go to 400 ; and then, there is final Caph, denoting 500 ; Mem, denoting 600 ; Nun, denoting 700 ; Pe, denoting 800 ; Tsadde, 900.

Q. Then you understand that in the present Hebrew language, as enjoined to be taught in our Universities by the General Assembly of the Church of Scotland, one letter expresses numbers to the end of the alphabet ?

A. Yes.

Q. Now, Sir, turn up the table of numeration in Bishop

Beveridge's book ; in what language are the numerals there given ?

A. Arabic, Syriac, Greek, Samaritan, Hebrew, Roman, Indian, Chinese, Ethiopic.

Q. And all these are different from each other ?

A. Yes.

Q. How many letters were there in the Greek ? Were there not twenty-four, which, with the addition of three other characters, made twenty-seven ; making a complete series of units, tens, and hundreds ? And were not some of these characters borrowed from the Hebrew ?

A. I have no doubt they were.

Q. What were these ; is Koph one of them ?

A. Perhaps ; but I won't commit myself, unless I particularly examine them.

Q. Then it is your opinion, that the Samaritans used the same mode of expressing numbers by letters, that the Hebrews did ?

A. The same.

Q. Now, Sir, attend to this note which I shall read to you : " The oriental nations appear generally to have represented the numbers as far as 1000, by dividing the alphabet into three distinct classes. But the Hebrew, the rudest and poorest of all written languages, having only twenty-two letters, could advance no farther than 400, and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100." Is that true, according to your understanding of the subject ?

A. That requires explanation. It is true as to the mode of notation among the Hebrews, before the Babylonish captivity. It is not so as to the mode of notation in use, since that period, among the modern Jews.

Q. In short, it is true of the *Samaritan*, or old Hebrew character ; but it is not true as to the Hebrew language now in use ?

A. It is true as to the language of the Old Testament. There is no example of modern notation at all in it. The numbers are always expressed by words at length.

Q. There is a remark in Beveridge's book upon this subject. Is that remark written in the Hebrew character ?

A. It is.



Q. And in that character do the Hebrews mark the numbers?

A. Not in the Old Testament.

Q. I ask you, do the Hebrews mark in that character *now*? Is that the correct mode of marking the numbers now in use among the Hebrews?

A. It is, as it was understood at the time Bishop Beveridge wrote. I may mention that, on Saturday night last, I looked into the oldest Hebrew Grammar published by a Protestant, Reuchlin, which was edited by Sebastian Munster; who says, that he supplied from Elias Levita, a celebrated Jewish grammarian, the defects which he found in Reuchlin's Grammar; and it is somewhat curious, that I found that though he gives the forms of the five final letters, yet, after giving the respective numeral powers to the twenty-two letters, he takes no notice of any numeral power of the final letters; but, on the contrary, adds what I shall translate, as the work is written in Latin,—"But as the letters of the alphabet do not extend beyond 400, it will be necessary to express the numbers above 400 by two letters, and sometimes by *three*, &c."

Q. Did you look at any of the later grammars, or are you aware that there were any authors who believed that the five final letters were of an earlier origin?

A. O yes. Buxtorf, I believe, thinks they were as old as Adam; or, at least, as old as any books in existence, or that ever were written.

Q. Do you know Noble?

A. I do perfectly.

Q. Now, Sir, I ask you, from the accurate and intimate knowledge you appear to possess of the Hebrew language, do you consider the Hebrew as the rudest and poorest of all written languages?

A. Certainly not, Sir.

Q. Has it great power of expression?

A. Yes, and it is extremely simple; and is in some respects one of the most philosophical languages in existence.

MR. JEFFREY.—I am not exactly aware of what you stated as to the ancient Protestant Hebrew Grammar; was it to this effect that it gave a numeral power to the twenty-two letters, but none to the final letters?

A. Yes, and that the Grammar gives this statement, that as the alphabetical letters of the Hebrews do not extend to numbers beyond 400, it became necessary to make up

the remaining numbers by two letters, and sometimes by three letters, *viz.* to make up 900.

Q. Is Frey's Grammar a book of much celebrity?

A. Very much so.

Q. Look at the numerals which you will find on the fifth page. How are they described?

A. The numerals are given in the following manner : 500 is expressed thus, קח (*Tau, Keph*) or ך (*final Caph,*) that is, 400 + 100, or 500.

Q. This is one of the most recent Grammars which makes mention of that mode of Hebrew notation?

A. Yes.

Q. In the Old Scriptures, written in the Samaritan character, there are no numbers denoted by letters, but all the numbers are given in words?

A. Yes.

Q. In the Church of Scotland, the Hebrew in the Chaldaic character is the only Hebrew understood and referred to as necessary to be acquired by the students of divinity?

A. It is.

Q. Is it the only orthodox character of the language of Scripture, or is it not?

A. It is not.

Q. You have been asked, Sir, whether the Hebrew is, in your opinion, the rudest and poorest of all written languages, and you have said that it is not. Now, look at the passage again, and say whether in your opinion Professor Leslie's remark refers to the general character of the language, or to the mode of notation only?

A. That is not a question for me to answer.

CHIEF COMMISSIONER.—That question is more fit for the consideration of the Jury.

BY A JURYMEN.—In answering the question put to you as to the note of Mr. Leslie, indicating knowledge or ignorance of the Hebrew language, what did you say?

A. I said, that, as to notation, it did not indicate ignorance : I cannot say as to his knowledge or ignorance of the language : He himself says, it is the rudest and poorest of all written languages.

LORD GILLIES.—Does the note itself indicate ignorance of the language?

A. I would say it does ; because he says that the Hebrew is the rudest and poorest of all written languages,

but still he might not be ignorant of the language, and yet think it to be so.

Rev. Dr. DAVID SCOTT, Minister of Corstorphin, sworn.

Mr. JEFFREY.—Dr. Scott, you are the Minister of the Parish of Corstorphin?

A. I am.

Q. You have spent a considerable portion of your time in the study of the Oriental languages, and particularly of the Hebrew?

A. I have.

Q. You look upon yourself, of course, to be particularly well acquainted with the Hebrew?

A. I do.

Q. Is it understood among the learned to have been at all times written in one, or in different characters?

A. It is the generally received opinion, that at the time while it was a spoken language, its character was that of the Samaritan; but that Ezra substituted the Chaldean character in the room of the Samaritan; and the Chaldean character is now that which is found in all Bibles.

Q. Did this happen subsequent to the return of the Jews from the Babylonish captivity?

A. The majority of the learned think so; but a very respectable minority are of opinion, that this happened in the second century of the Christian era.

Q. Is Whiston of that opinion?

A. Yes; Whiston, Buxtorf, a great name in Hebrew literature, and others, think that this did not happen till the second century after Christ. The late Dr. Doig of Stirling also inclined to that opinion\*.

Q. What number of characters has the Samaritan?

A. Twenty-two.

Q. Has it no final characters?

A. It has none.

Q. Was the Hebrew alphabet divided into a series of letters, and can it go farther than 400?

A. It can go no farther.

Q. Be so good as explain the cause of this.

A. The first nine letters are termed *units*; the second nine are termed *tens*; the rest are termed *hundreds*; when

\* See article Philology.—Encyclop. Britan.



the numbers amount to more than 400, they are joined together, thus, as  $400 + 100 = 500$ , and so on.

Q. Have you read the note in Mr. Leslie's book on Arithmetic, which is partly the ground of this action?

A. I have, (the witness was here shewn the book.)

Q. Does that representation of the mode of expressing the Hebrew numerals strike you as being truly the mode of notation by the ancient Samaritan character?

A. Yes, it does.

Q. You are acquainted with Bishop Beveridge's work?

A. I am.

Q. Look at that copy of Bishop Beveridge's work, page 212, where you will see a table of numeration by Hebrew characters, (here the book was shewn to the witness.) Is that the method of notation you have explained to us?

A. Precisely so.

Q. And is this done by the use of two characters after 400?

A. Precisely.

Q. You have said that the Chaldaic character was introduced at the return from the Babylonish captivity, according to the general opinion; or about 200 years after the Christian era, according to others. What number of letters is there in the Chaldaic language?

A. Twenty-two.

Q. Have they any more letters expressing character, but not different in sound?

A. Five. There are twenty-two characters expressive of sound, and there are twenty-seven expressive of numbers\*.

Q. Is it known whether the final letters are parts of the original character of the Hebrew language, or were they added afterwards?

A. I have been told that they were introduced some time afterwards, but I have been able to find no authority for saying so. They were introduced, it would seem, by the transcribers of manuscripts, partly on account of their beauty and variety.

\* In one Hebrew manuscript, as old as the middle of the 12th century, final letters are used to denote numbers. See Kennicott's General Dissert. Heb. Bib. page 94. In others the final letters have just the same power as the initial, or medial, answering to them. If, for instance, the initial or medial M, express 40, the final M will just express 40, page 73. Or if initial and medial K express 20, final K will do the same, page 74.

Q. Looking at that note of Mr. Leslie's; does it appear to you to contain intrinsic evidence that the writer was ignorant of the Hebrew mode of notation.

A. It seems to indicate a correct knowledge of the mode of notation used in the ancient Hebrew, or the Samaritan character.

Q. Then there is nothing in the note to indicate the writer's ignorance of the Hebrew language, or of the alphabet?

A. I think none.

Cross examined by Mr. FORSYTH.

Q. In the rules of the General Assembly, prescribing the studies of the young men destined for the Church, and referring to the Hebrew of the Bible, and of the Psalms, do they understand the Chaldaic, or the Samaritan character?

A. The Chaldaic.

Q. Therefore the students of divinity are trained in the Chaldaic or modern Hebrew?

A. They are.

Q. Is the Hebrew Grammar of the Assembly a Samaritan Grammar.

A. It is Chaldaic, or, what is commonly called Hebrew, though, properly speaking, it is Chaldaic.

Q. Now, in the Hebrew, or what is called so by us, is it necessary to express the numbers by double letters?

A. They can express numbers by the twenty-two single letters to 400; and the five letters of *double* form, carry the numbers up to 1000.

Q. Do you know any other way they have of expressing numbers by letters?

A. Sometimes it is done in the same way as by the ancient Samaritan character. In editions of the Hebrew Bible, at the end of books, such as Genesis, the Hebrew critics sometimes give the number of all the verses, words, or letters, in that manner\*.

Q. Was it necessary to do so? Could they do the same thing otherwise?

A. It was not necessary, but they might do it if they chose.

Q. It is said in this note of Mr. Leslie's, which I pre-

\* For some examples of the mode of notation by letters among the ancient Hebrews, the learned reader may consult Vander Hooght's edition of the Hebrew Bible, 1705.

sume you have seen, and which you will now look at, that the Hebrew is "the rudest and poorest of all written languages." I ask you, what is your opinion of that remark?

A. In this case, I would not object to the word rude as applied to Hebrew, if the meaning was, that it was the language of a rude people or an early age. As to the poverty of the language, we are not entitled to judge, till a clear and accurate examination be made of Hebrew, and all its dialects, which has never yet been done.

Q. Do you think that the Hebrew is the rudest and poorest of all languages?

A. No: I am not of that opinion.

CHIEF COMMISSIONER.—I understand you to say that the Hebrew alphabet has a power of numeration to the extent of 1000, by means of the final letters;—these final letters, I understand, are different from the form of the other letters, similar to the way in which the capitals A, B, C, &c. differ from the common Roman letters, little a, little b, little c, and so forth; now, have these final letters any sound peculiar to themselves, different from the initial or medial ones, having the same name; or are they used as numerals only in conjunction with the other letters?

A. They have no sound different from the letters of the same name, though they have a numerical power different from these letters.

Mr. JEFFREY.—We now proceed to lead evidence on that part of the case which charges the pursuer, Mr. Leslie, with being a plagiarist.

With this view I now lodge Mr. Leslie's Treatise on Heat; the Volume of Philosophical Transactions of the Royal Society of London, 1777, containing Mr. Nairne's Paper; the sixth volume of the Encyclopædia Britannica, referring to page 607; the eighth volume of the Memoirs of the Institute, referring to page 71. The Philosophical Transactions of the Royal Society of London in 1813, from which I shall read over one passage on page 72.—"As a means of avoiding the necessity of so large a vacuum, Mr. Leslie had recourse to the ingenious expedient of employing an extensive surface of sulphuric acid, for the purpose of absorbing the vapour generated in the course of the experiment, and by that means continued to freeze much larger quantities of water than could otherwise have been done, and by a far less laborious process."



“ But even in this method the labour is not inconsiderable, and the apparatus, though admirably adapted to the purpose for which it is designed, is large and costly.”

I also put in Memoirs of the Institute for 1811, referring to pages 79 and 80, 1st article, in which the writer says, “ Mr. Leslie, member of the Royal Society of London, has contrived to augment still farther the effect of the abstraction of air, by placing under the receiver of the pneumatic machine, bodies very attractive of moisture, which, by absorbing the vapour as fast as it is formed, multiplying indefinitely its production; and he has succeeded in this way, in producing a refrigeration so rapid and violent, that the water is frozen in a few minutes, at any season of the year. It is a mode of obtaining, at pleasure, ice without any other expense than the fire necessary to dry again the absorbent substance which had been employed.”

DR. ALEXANDER MARCET, F.R.S. London, sworn.

Examined by Mr. JEFFREY.

Q. Dr. Marcet, you are a Fellow of the Royal Society of London?

A. I am.

Q. And you were for some years physician to Guy's Hospital?

A. Yes.

Q. You practised medicine in London, did you not?

A. For many years.

Q. And you have read lectures on chemistry for some time?

A. I have, for some years.

Q. You have attended to the progress of chemistry from time to time?

A. Yes.

Q. You have done so both at home and abroad?

A. I have. Lately, I have spent some part of my time abroad.

Q. Have you attended to the process of freezing water *in vacuo* discovered by Mr. Leslie?

A. Certainly.

Q. And you know it?

A. I have repeated it often.

Q. Did it appear to you at the time to be an original discovery?

A. It did then, and it does now, appear to me to be an original process.

Q. Are you acquainted with the details of the experiment made by Mr. Nairne, as described in the Philosophical Transactions in 1777?

A. I heard of Mr. Nairne's paper long since, but I read it only lately?

Q. Did you attend to this matter with a view to satisfy yourself of the justice of Mr. Leslie's claim to be considered as the original discoverer?

A. I did so, with a view to this question.

Q. Is it your opinion now, that Mr. Leslie is to be considered as having borrowed or stolen this discovery from Mr. Nairne's work; or do you still consider his discovery to be original?

A. I remain of the same opinion, though some of the *facts* on which the discovery rests were known long before: They were known to Dr. Cullen and Dr. Black, but the *process* itself is perfectly original.

Q. I understand you to say that the *facts* on which the experiment or discovery of Mr. Leslie is grounded, were known to chemists before; for instance, that sulphuric acid is an absorbent of moisture?

A. That was known long before Mr. Nairne's time.

Q. Was it also known that evaporation produces cold?

A. That also was known generally.

Q. Had any one, before Mr. Leslie did so, combined these two principles in the way he has done?

A. Certainly not; and it is on that combination that the claim to originality rests.

Q. I ask you, Sir, is this discovery of Mr. Leslie's analogous to other discoveries in the science of chemistry?

A. There is hardly any discovery of the least value that has been made in the science of chemistry, but from the known properties of bodies. It is by combining those properties, so as to produce certain effects, that a discovery in science is made. If the discovery were fortuitous, it could not be considered so meritorious.

Q. I ask you, is there in that paper of Mr. Nairne's, which you say you have lately studied, any experiment to show the production of cold, by the use of sulphuric acid?

A. Mr. Nairne has certainly shown that when sulphuric acid is placed within the receiver of the air-pump, a greater

dryness is produced; but he has shown no production of cold by the evaporation of water. His experiment was not made with water, but with ether; while the freezing of water by its own evaporation *in vacuo*, assisted by the presence of sulphuric acid within the same receiver, are points quite peculiar to Mr. Leslie's discovery.

Q. You have said that Mr. Nairne produced cold by the evaporation of ether, under the receiver of the air-pump, and that this process was known long before;—now, I ask you, did Mr. Nairne employ sulphuric acid in his experiments with water?

A. He did not. At least, if there was any sulphuric acid introduced in the experiment with water, he does not mention it.

Q. Now, Sir, I ask you, do you, after reading that paper of Mr. Nairne's, consider Mr. Leslie as a plagiarist?

A. Certainly not.

Q. Dr. Marcet, you are a philosopher, and a chemist. Now, suppose you had read the details of Mr. Nairne's experiments, as given in the Transactions of the Philosophical Society, would you have considered him as a sure guide to that process which Mr. Leslie has traced in his discovery?

A. Certainly not. Mr. Nairne's work was in the hands of the philosophic world long before Mr. Leslie's discovery, and many and much abler men than myself had read it, who yet had overlooked that discovery. The application of the facts formerly known, as made by Mr. Leslie, does not appear to have been at any time in Mr. Nairne's mind.

Q. With this general knowledge of the subject, do you yourself consider, and do you know, that the philosophic world in general, have considered Mr. Leslie's discovery as original?

A. I have not heard a dissentient voice upon the subject, either in London or abroad, as far as my knowledge extends.

Q. Do you recollect at what time the knowledge of this experiment of Mr. Leslie was received in London?

A. About the year 1811, I believe.

Q. Was it communicated in any written statement by Mr. Leslie?

A. I believe it was, by letters from him.

Q. And was the experiment tried in London?

A. It was repeatedly tried, and it failed?



Q. Did you try it ?

A. I did, and I was unsuccessful.

Q. You knew the principles upon which Mr. Leslie proceeded in his experiment ?

A. I did generally ; but, in some particulars, my knowledge was defective, which caused the failure in my attempt to perform it.

Q. Was the information conveyed in the letters of Mr. Leslie much nearer to the actual process which you afterwards saw him successfully perform, and which you yourself afterwards successfully repeated, than the detail given in Mr. Nairne's book ?

A. Infinitely nearer. I placed the sulphuric acid under the receiver of the air-pump, together with the water, by which means the water was considerably cooled, though not sufficiently to freeze.

Q. When, and by whom, was the experiment first successfully performed in London ?

A. It was successfully performed in London by Mr. Leslie himself. We had a meeting in London, of some of the members of the Royal Society, and others, and Mr. Leslie exhibited the experiment before us successfully ; and it is now quite easily repeated. My belief is, that no one succeeded in this experiment in London, until Mr. Leslie himself showed the way, at least it did not come to my ears.

Q. Do you know Sir Humphry Davy ?

A. I do.

Q. Do you know that he tried the experiment and failed ?

A. I cannot positively say. I believe he tried it, when first mentioned, but without success.

Cross-examined by Mr. FORSYTH.

Q. Dr. Marcet, you have told us that the principles of this experiment of Mr. Leslie's were known to Mr. Nairne. Was it by combining the two principles of Nairne, and placing the sulphuric acid within the receiver of the air-pump, that the discovery was made ?

A. I shall speak first as to Mr. Nairne ; then as to Mr. Leslie. Mr. Nairne's first object was to ascertain why he could not produce a more perfect *vacuum*. He observed that vapour was given out from a small piece of wet leather, made use of in the air-pump, to make the receiver air-tight.

He found that his inability to produce a perfect vacuum arose from the vapour proceeding from this piece of wet leather. Of two gauges he employed, one acted better than the other. In investigating the cause of this, he was led to try the power of a variety of substances to produce vapour, such as water—spirit of wine—and sulphuric acid; and the manner of ascertaining the quantity of vapour produced, was by weighing these substances, both before and after the experiment. This was done to show the loss in weight these substances had respectively sustained by the evaporation. In the case of sulphuric acid, instead of a loss, Mr. Nairne found that the acid had gained two grains. He reflected upon this, and found that it was owing to the circumstance of the watery vapour of the receiver having been absorbed by the sulphuric acid, instead of any evaporation having taken place from it. Mr. Nairne did not go farther. He did not, like Mr. Leslie, think of *cooling*, much less of *freezing* water, by the help of sulphuric acid. In his experiment on ether, he produced a certain degree of cold, and he observed little particles of ice left in the receiver. He thought he had frozen ether, but the opinion of the philosophic world was, that he had only frozen a little water, which was accidentally mixed with it.

Q. You have said, Dr. Marcet, that it was well known before, that evaporation produced cold,—was it not a very natural idea that this evaporation by means of sulphuric acid, should produce ice to any extent, when he found ice produced by his experiment with the sulphuric acid?

A. No doubt a man of a powerful genius might have entertained such an idea, and might have arrived at Mr. Leslie's discovery. Mr. Leslie, by meditating on the result of Mr. Nairne's experiments, might have drawn from it the discovery he made; but if he had, he would have given a great proof, both of an inductive and an inventive genius.

Q. Then you mean to say that Mr. Leslie has done what none before him ever accomplished?

A. Certainly. He has done what the whole philosophic world, with all these facts before them, for more than sixty years, had not been able to accomplish. I certainly consider, therefore, that the honour of the discovery, if obtained in this way, was unquestionably much greater than if derived from mere accident.

DR. THOMAS THOMSON, Regius Professor of Chemistry in the University of Glasgow, sworn.

Examined by Mr. JEFFREY.

Q. Dr. Thomson, you are a professor of chemistry in the University of Glasgow?

A. Yes.

Q. And you are the author of a treatise on that science?

A. Yes.

Q. It has gone through more than one edition?

A. Yes.

Q. Are you acquainted with Mr. Leslie's experiment of the production of ice by means of sulphuric acid placed under the receiver of the air pump?

A. I have repeated it a hundred times.

Q. Did you do so soon after Mr. Leslie performed it?

A. It was very soon after.

Q. Do you consider that as an original discovery, or a discovery borrowed or stolen by Mr. Leslie from some philosophical work?

A. I believed it at the time to be an original experiment, and I think so now.

Q. Are you acquainted with Mr. Nairne's paper published in the Philosophical Transactions of the Royal Society?

A. I have read it.

Q. Have you done so with a view to this case?

A. I have, carefully.

Q. And your opinion remains the same as before?

A. Quite the same as it was before.

Q. And you know of nothing to impeach the originality of the discovery?

A. Nothing.

Q. Both the facts upon which the discovery is founded, I mean, that evaporation is productive of cold, and that sulphuric acid is an absorbent of moisture, were known before?

A. They were known long before, familiarly.

Q. Did Mr. Nairne's experiment fix any other principle?

A. None. Mr. Nairne's object was to explain the disagreement betwixt Mr. Smeaton's pear-gauge and the common barometrical gauge.



Q. Did any one combine these two facts before Mr. Leslie?

A. No one, so far as I know.

Q. Do you think Mr. Nairne did?

A. Most certainly he did not.

Q. Do you think that this, being only a combination of properties previously known, derogates from the merit of the discovery made by Mr. Leslie?

A. I do not. It is almost always the case with every discovery.

Q. Was there any water used along with the sulphuric acid by Mr. Nairne, in making his experiment?

A. None whatever, and the experiment itself was known before.

Q. In short, where sulphuric acid was used in Nairne's experiments no water was applied; and when water was used, no sulphuric acid was applied in the production of cold?

A. None.

Q. Was this experiment of Mr. Leslie's by combining sulphuric acid with water in the production of cold, considered by men of science as a brilliant discovery?

A. It was.

Q. Was it universally attributed to Mr. Leslie?

A. It was.

Q. And not to Mr. Nairne?

A. It was not.

A. Did you ever hear the originality of the discovery disputed?

A. I never heard it so much as doubted.

Q. Are you acquainted with Mr. Leslie's geometrical works?

A. I am.

Q. Are these works considered to be works of merit and originality?

A. They are.

Dr. HENRY DEWAR, Physician in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. Dr. Dewar, you are a physician in Edinburgh?

A. I am.

Q. Have you made chemistry a particular subject of study?

A. I have.

Q. Have you delivered lectures on chemistry in this city ?

A. Yes.

Q. You are acquainted with Mr. Leslie's discovery of the evaporation and freezing of water by means of sulphuric acid ?

A. I am.

Q. When were you apprised of Mr. Leslie having made this discovery ?

A. As soon as it was circulated in conversation.

Q. And have you always considered it to be an original discovery ?

A. I have.

Q. You have seen Mr. Nairne's paper giving an account of his experiments with sulphuric acid and ether, published in the Philosophical Transactions a good many years ago ?

A. I have read that paper lately.

Q. And with a view to the merits of this cause ?

A. Yes.

Q. And did the reading of that paper alter the views you had previously entertained of Mr. Leslie's discovery ?

A. Not in the least.

Q. Mr. Leslie's experiment was founded on the known principles of the absorption of vapour by sulphuric acid, and the production of cold by evaporation ?

A. Yes ; under an exhausted receiver.

Q. Did any one, to your knowledge, so combine these two principles before ?

A. None.

Q. No one did so before Mr. Leslie ?

A. None before Mr. Leslie.

Q. Did Mr. Nairne observe that sulphuric acid produced cold in the course of his experiment with water ?

A. No, he did not. There was no water used by him along with sulphuric acid.

Q. Mr. Nairne produced cold by the evaporation of ether ?

A. Yes.

Q. There was no water used in that process ?

A. No water for evaporation.

Q. Did Mr. Nairne ever combine the two principles you have spoken of ?

A. He did not.

Q. He only discovered them separately ?

A. He exhibited or employed them, but did not discover either.

Q. What is your understanding of Mr. Leslie's discovery, in the opinion of the literary world ? Was it always considered as an original discovery ?

A. It has always been so considered.

Q. And that no other person was entitled to claim the merit of it ?

A. None.

ROBERT CADELL, Bookseller in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. Mr. Cadell, you are a bookseller in Edinburgh ?

A. I am.

Q. You are a partner of the firm of Constable & Co. ?

A. I am.

Q. Was it your house that published the first edition of Mr. Leslie's *Philosophy of Arithmetic* ?

A. Yes it was.

Q. How many copies of the first impression were thrown off ?

A. Fifteen hundred.

Q. Was that considered a large impression for such a work ?

A. It was considered a large impression.

Q. When did that publication take place ?

A. In November, 1817.

Q. Was any stipulation entered into between your house and Mr. Leslie, in regard to the publication of the book and copies that might remain unsold ?

A. There was.

Q. What was the nature of that stipulation ?

A. We were to return to Mr. Leslie what copies of the book remained unsold at the end of two years.

Q. In that time how many copies of the book had been sold ?

A. Above 900 copies.

Q. Was that considered as a large sale for such a work ?

A. It was considered a very large sale.

Q. Did your house return the unsold copies ?

A. We did.

Q. Was any proposal afterwards made to your house to put out the book as a second edition of the work ?



A. There was.

Q. And did you accept of that proposal?

A. We declined it, as Mr. Leslie's terms were too high?

Q. Do you know that it was afterwards published as a second edition in 1820.

A. Yes.

Q. Who was the publisher of this second edition?

A. Messrs. Tait.

(The witness was here shown the first and second editions of the book.)

Q. You have looked at these two editions, and compared them with each other?

A. I have.

Q. Are there any additions to the original work to be found in the copy which is called the second edition?

A. There is an additional table, and there is some additional matter at the end of the book. From page 238 to the end, consisting of twenty pages, including the table, is reprinted as additional matter, and there is also a paragraph in the preface reprinted.

Q. Now I ask you, are they in your opinion the same, or different editions of the book?

A. They are different editions.

Q. Is the one edition larger than the other?

A. It decidedly is.

Q. Is there any form of language in your craft or calling, by which these improvements and additions to the original work could have been properly notified to the public in an advertisement, but by alluding to the book as an "improved and enlarged edition?"

A. None that I know of.

Q. Is there any advertisement or notice of these additions and improvements given to the public in the preface to that copy which you call the second edition?

A. There is a reference to both.

Q. Now, Sir, look at the last paragraph of the preface to the second edition; is that last paragraph reprinted?

A. The last paragraph is reprinted.

Q. Now, Sir, look at it again; is that paragraph not in these words: "In this edition I have introduced considerable improvements. The large multiplication table is now printed in a more convenient form, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made consists in the table of

quarter-squares, near the end of the volume ; which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves." Is that the last paragraph ?

A. It is.

Q. Does that paragraph contain a true account of the alterations and improvements made upon the work ?

A. It does.

Q. Now, Sir, do you know that any change was made in the selling price of the book ?

A. There was ; the price was raised from 8s. to 9s.

Q. Do you consider that all this was any imposition on the public ?

A. Decidedly not.

Q. In your opinion, was there any other proper mode that could have been adopted of noticing these additions and improvements of the work ?

A. In my opinion there was none.

CHARLES TAIT, Bookseller in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. You are a bookseller in Edinburgh ?

A. I am.

Q. In that large shop in Prince's Street, at the corner of Hanover Street ?

A. Yes.

Q. Did you publish a second edition of Mr. Leslie's *Philosophy of Arithmetic* ?

A. I did.

Q. When was that edition published—was it in 1820 ?

A. Yes.

Q. You had seen the first edition of the work before ?

A. I had.

Q. Was the second edition you published the same with the first ?

A. Not at all.

Q. It contained some new matter, did it not ?

A. Yes.

Q. There was an additional table added, and about twenty pages of additional matter in all ?

A. Yes.

Q. Were you aware that the middle part of the book remained the same as before ?

A. I was.

Q. Now, Sir, was there any way of expressing, in the language of the trade, the alterations and additions made to the work than that which was adopted in the announcement of the second edition?

A. There was no other.

Q. Was the price of the book raised to the public?

A. It was made a shilling dearer.

Q. Was that a fair price?

A. Yes.

Q. Do you consider that the selling of the book in this way as a new and improved edition, and adding to the price of it, was a dishonest attempt to impose upon the public?

A. No, I do not.

Cross-examined by Mr. FORSYTH.

Q. You say there was no other way in which these alterations and additions in Mr. Leslie's book could have been notified to the public, but that which you adopted. Could not Mr. Leslie have inserted in the preface that these alterations and additions consisted of eighteen pages of notes at the end of the book—of a new title page—and of the paragraph in the preface, which contained that statement. Would not that have informed the public equally well of the nature of the improvements made upon the book as the mode which you adopted?

A. That would not have informed the public properly.

Q. Would it not?

A. No, it would not.

Q. The paragraph is in these words:—"In this edition I have introduced considerable improvements; the large multiplication table is now printed in a more convenient form, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made, consists in the table of quarter-squares, near the end of the volume, which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves."—Now, Sir, would not the public have understood the nature of the additions and improvements which were actually made, if, instead of this paragraph, Mr. Leslie had said, "I have added eighteen pages of notes, with a new multiplication table at the end of the book, and prefixed a new title-page?"



A. They would not.

MR. JEFFREY.—The witness means, that that would not have informed the public so well as in an advertisement that this was a new edition of the book, with alterations or additions.

CHIEF COMMISSIONER.—What do you understand, Sir, by a second edition?

A. A book that has been re-published.

CHIEF COMMISSIONER.—That I understand—but would the publication be considered as a new edition, if 500 copies of the work, remaining unsold, had been again offered to the public in an advertisement as a second edition, though no material alteration had been made in the body of the work;—for example—take Dr. Robertson's History of Scotland. If the whole edition, or first impression—say 1000 copies—were sold, and the book re-printed, that re-print, I understand, would be a second edition, though no new matter were added; but suppose that, of the 1000 copies thrown off at first, 500 copies remained unsold in the hands of the bookseller, and were to be returned by him to the author, and that these copies were again offered to the public, probably with some trifling alterations or additions, or with none at all, would that be considered as a new edition?

A. Yes.

Q. Is that the practice of the trade? Are there any instances of it?

A. There are many instances.

Q. Do you recollect of any?

A. None at this particular moment.

Q. Suppose the copy, or first edition, to be exhausted, and is reprinted as a second edition, and suppose part of the copies of this second edition to be sent back unsold, and to be put out again to the public with farther alterations, is that also a new edition?

A. That is a new edition.

Q. Does that depend on the magnitude of the alterations upon the work?

A. Not altogether.

Q. Is that considered as the practice of the trade?

A. It is.

SAMUEL AITKEN, Bookseller in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. Mr. Aitken, you are a bookseller in Edinburgh?

A. I am.

Q. And in partnership with Mr. John Bradfute?

A. Yes.

Q. How long have you been a partner with that gentleman in business?

A. Twelve years, and upwards.

Q. Are you acquainted with the fact of there having been a second edition published of Mr. Leslie's Philosophy of Arithmetic?

A. Perfectly.

Q. Are you aware of there having been any difference betwixt the first and second editions?

A. I am.

Q. Were the preface and title-page printed, and a large folding sheet, and twenty new pages added to the book?

A. Yes.

Q. And the rest of the book was just the original copies, with the variations now stated?

A. Yes.

Q. Now, Sir, do you think that these alterations and additions entitled the author and the publisher of this book, to call this a new or second edition of the work, in an advertisement to the Public?

A. I think it was necessary.

Q. Do you think the additional price of One Shilling, put upon the work, a fair price?

A. I think it a fair price.

Q. Do you think there was any other way that could properly have been taken to inform the Public that this additional shilling's worth of new matter was added to the work?

A. That is the proper mode of doing it.

Q. You have done this yourself?

A. I have.

Q. Can you name any instances of your having done so?

A. I can name one—Ross's Lectures. After a number of the copies had been sold, an index and appendix was added to the remaining copies, and they were sold as a new edition, with these additions.

Q. Is this considered as in strict conformity to the practice of the trade?

A. It is.

Q. Now, Sir, look at that book, (a book handed to the witness ;) what is the name of that book?

A. Condorcet's Arithmetic, translated by Johnston.

Q. Who appears to be the publisher of that edition?

A. William Blackwood.

Q. Is that called a second edition?

A. It is.

Q. Do you know any thing of the history of that edition?

A. I do.

Q. Let us hear it?

A. The book was originally printed and published by Mr. Goldie. At his sale, the copies remaining on hand unsold, were purchased by Mr. Blackwood, by whom they were published with a new title page, and sold as a second edition?

Q. And is that one of the copies so sold by Mr. Blackwood?

A. Yes, it is.

MR. JEFFREY, to the Jury.—Gentlemen, this is the defender, Mr. Blackwood.

#### Cross-examined by Mr. FORSYTH.

Q. You have said that there was no other way of notifying these alterations to the public, but that which you have mentioned. Would it not have informed a purchaser of the second edition, though there had been no such advertisement, if it had been stated in the preface what the alterations consisted of?

A. Yes, after they had purchased and read it.

Q. Do purchasers of books generally buy them without looking at them?

A. They do so sometimes.

Q. Are you aware of any instance of an author joining along with the bookseller, in stating to the public that he had put forth a new or second edition of his work, when it was, in truth, nothing more than the original impression with a new title-page?

A. I am not.

Q. Did you call Ross's Lectures a second edition?

A. We called it a second edition with an appendix. We did not mean to call it a *reprint*.



**Q.** Do you understand by a new edition a reprint?

**A.** Not always.

**Q.** If a book is advertised as a new edition, when it is only a reprint, does that carry the idea to the public that it is a new work?

**A.** Certainly not. A reprint is certainly not an improved edition.

**Q.** In announcing the new edition of Ross's Lectures, did you, on the title-page, call it an improved edition?

**A.** We merely stated the fact, that there was added an Appendix and a complete Index.

**Mr. JEFFREY.**—If a book is printed with valuable additions, and a quantity of new matter, is that an improved edition?

**A.** Certainly.

**LORD CHIEF COMMISSIONER.**—This table, which I am unfolding, is a new part of the work I now hold in my hand; and from page 238 to the end of the book, consisting of twenty pages, the matter is entirely new. You see the quantity. What is between that and the title-page of the book, was got back, in consequence of a bargain betwixt the author and the bookseller, that at the end of two years what was not sold of the original impression should be given back. At the end of this period, the author got back from the bookseller the copies which remained on hand unsold. The author then added the new matter, which I have described to you, with an addition to the preface, and a new title-page, and the book has been republished in its present form. Now what is that called?

**A.** A "second edition, improved and enlarged."

**Q.** Do you think the using the original copies of the book in this edition makes any variation in the case?

**A.** In consequence of these alterations, I would certainly call the work a new edition enlarged.

**ROBERT MILLER**, bookseller in Edinburgh, sworn.

**Examined by Mr. JEFFREY.**

**Q.** Mr. Miller, you are a bookseller in Edinburgh?

**A.** I am.

**Q.** You were bred with the late Mr. Creech?

**A.** I was.

Q. How long have you been in business?

A. Since the year 1794.

Q. Have you seen the second edition of Mr. Leslie's *Philosophy of Arithmetic*?

A. I have.

Q. And you know that it contains some valuable additional matter?

A. I understood the second edition contained a few additional sheets.

Q. It contains a new Multiplication Table; a valuable table of quarter-squares; and some important notes, making in all about twenty pages of new matter, with an addition to the preface describing these improvements; and it has a new title-page. Now, Sir, how would you describe such a publication?

A. I have no hesitation in saying that I would consider myself entitled to call it a *new* edition.

Q. Do you know of any other way of expressing such improvements, as I have now described, to the public?

A. I know of no other.

Q. If large and valuable additions were made to the original work, would the book thus enlarged and republished be properly called a new and improved edition?

A. I would have called it a second edition, enlarged and improved.

Q. Now, Sir, look at that book (shown Leslie's *Philosophy of Arithmetic*, second edition) what is that book called?

A. It is called "Second Edition, improved and enlarged."

Q. Do you think that is a correct description of the book?

A. I recollect seeing this book on the day of its publication. I think the description correct.

Mr. MORE.—Q. What would the public understand from the description given of it in this title page?

A. They would understand that it was a new edition altogether.

Q. Have you ever done such a thing as has been done here, in the course of your profession?

A. Yes, I have one instance distinctly in my recollection. Manners & Miller published a work of the late Mrs. Elizabeth Hamilton, entitled, "*Popular Essays*," of which 2000 copies were printed as the first edition. After we had

sold about 1500 copies; the sale of the work became rather slow. We stated to the author, that if she would add some new matter, we should, with her permission, print a new title-page for the remaining copies, and republish the work as a second edition. To this proposal the author at once agreed, and furnished a new preface, which was printed along with the new title-pages, and the book was republished, and sold as a second edition.

Q. I understand you to say, that the public would understand that the whole work was reprinted?

A. The public would certainly understand that the whole was reprinted.

MR. JEFFREY.—And would the public be any thing the worse for this?

A. Nothing the worse.

MR. JEFFREY here intimated to the Court that the case on the part of the pursuer was closed.

MR. FORSYTH.—Gentlemen of the Jury, I must begin with saying, that I regret it has fallen to my lot to address you in behalf of the defender, Mr. Blackwood, on the present occasion. Another gentleman, of great professional knowledge, had studied and prepared himself for this case, but in consequence of circumstances which are pretty generally known, he was under the necessity of leaving this city, rather suddenly, for England; and in this case, certainly requiring more time than I have been able to bestow upon it, and which its importance and novelty in our Courts would have required, had a few days longer time been given, I would have been relieved of the task I have undertaken; and you, Gentlemen, would also have been relieved, by having a much clearer state of my client's case laid before you than I can be expected to give.

Gentlemen, I now proceed to the discharge of my duty. The *dramatis personæ* in the present case are, the pursuer, Mr. Leslie, a Professor of Natural Philosophy, and an author. He is the pursuer of this action of damages, in which he comes before you, alleging that he has been defamed in his reputation as an author; hurt in his feelings and patrimonial interest; his scientific labours treated lightly; and his reputation as an honest man, and as a Christian also, attacked and injured. And for these



heavy wrongs and injuries, he asks a verdict from you of £5000 damages against my client. On the other hand, you have my client, Mr. Blackwood, a bookseller, not the author of the injurious libels of which the pursuer complains, but who is certainly responsible, as the publisher, for the consequences of them, if you shall find damages to be due.

But this remark must certainly have impressed the minds of many of you, that such an action as this is entirely new in this country. Where, Gentlemen, have you seen an instance of one author attacking another, as to the interpretation of tongues, and his merits and claims to originality, in literary works, followed up by actions of damages? We know of none in this country, we have heard of none in England that have proved successful; and before I conclude, I shall show you a case, ten hundred times stronger than the present, where the pursuer proved unsuccessful before Lord Ellenborough.

It is necessary that I should advert to the arrangement of the case. A long, and, in my opinion, unnecessary statement of it, has been gone into; and I shall follow the example of the pursuer's counsel in considering its details.

The first, and the greater part of the third issues, refer to a remark of the pusuer's upon the Hebrew language, and a complaint of Mr. Leslie's, that his Hebrew scholarship has been vilified by the defender, and his views misrepresented, in referring to a remark in his book upon Arithmetic, and regarding the Hebrew language. Then comes the second question about *heat*, or rather, about *cold*, as I think it should be called; and here we have a counter issue. Then we have a third about his being called a "parrot," and there also we have a counter issue. Fourth, we have a question about book making. And last of all, we have a question about the perverting the morals of the medical students; in which the pursuer seems to take upon himself, and claims to be considered as the Procurator Fiscal of the University of Edinburgh.

I shall follow this order, Gentlemen, in the remarks I have to offer upon the case. And,

1st, As to the question about HEBREW.

In the year 1818 or 1819, Mr. Leslie published his book upon Arithmetic; and how that publication has given rise to what you have heard stated in his favour this day, you may easily see beforehand. He speaks of the Hebrew

language in that publication, and I pray you to attend to what he says of the Hebrew language, and also of other languages, particularly the Greek; and about their mode of expressing the mystical numbers of the East. At p. 218 of his *Philosophy of Arithmetic*, not in the book itself, but in notes upon the text, he says, “The oriental nations appear generally to have represented the numbers as far as 1000, by dividing their alphabet into three distinct classes, But the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100. The Arabic alphabet, containing twenty-eight letters, supplied fully the three classes. It is very remarkable, that, when these letters are employed to signify numbers, they are written in the customary way, from right to left; but in adopting the peculiar numeral character appropriately styled Indian, the order is inverted, or proceeds from the left to the right. The Arabians, or Persians, have also another set of symbols, called the *Diwāni*, to express numbers, consisting merely of disguised and contracted words. This system extends as far as 400,000, and is much used in the East for keeping of accounts.”

At page 10, he refers to the Greek nations, and their mode of numeration, in the following manner: “The Greeks, after having communicated to the founders of Rome the elements of the numeral characters, which are still preserved, again exercised their inventive genius in framing new systems of notation. Discarding the simple original strokes, they sought to draw materials of construction from their extended alphabet. They had no fewer than three different modes of proceeding. 1. The letters of the alphabet, in their natural succession, were employed by them to signify the smaller ordinal numbers. In this way, for instance, the Books of Homer’s *Iliad* and *Odyssey* are usually marked. 2. The first letters of the words for numerals were adopted as abbreviated symbols. A simple and ingenious device was used for augmenting the powers of those symbols: any letter inclosed by a line on each side, and another drawn over the top, thus,  $\square$ , being made to signify *five thousand* times more. 3. But a mighty stride was afterwards made in numerical notation by the



Greeks, when they distributed the twenty-four letters of their alphabet into three classes, corresponding to *units*, *tens*, and *hundreds*. To complete the symbols for all the *nine* digits, an additional appropriate character was introduced in each class.

“ This beautiful system was vastly superior in clearness and simplicity to the combinations of strokes retained by the Romans, and transmitted by them to the nations of modern Europe. It was even tolerably fitted as an instrument of calculation, to which the Roman numerals were totally inapplicable.

“ The Greek notation proceeded directly as far as *nine hundred and ninety-nine* ; but, by subscribing an *iôta*, or short dash under any character, its value was augmented a *thousand* fold ; or, by writing the initial letter of *myriad*, the effect was increased still *ten times more*. With the help of punctuated letters, therefore, it reached to *ten thousand*, comprising four terms of our ordinary scale.”

Gentlemen, he did more than this. After vilifying the Hebrews, and praising the Greeks, he gives, in a note, his tribute of unqualified praise in favour of the mystical numbers of the East. At page 227, he says, “ Pythagoras brought from the East a passion for the mystical properties of numbers, under the veil of which he probably concealed some of his secret or esoteric doctrines. He regarded *numbers* as of divine origin, the fountain of existence, and the model and archetype of all things. He divided them into a variety of different classes, to each of which were assigned distinct properties. They were prime or composite, perfect or imperfect, redundant or deficient, plane or solid ; they were triangular, square, cubic, or pyramidal. *Even* numbers were held by that visionary philosopher as feminine, and allied to earth ; but the *odd* numbers were considered by him as endued with masculine virtue, and partaking of the celestial nature.

*Unit*, or *monad*, was held as the most eminently sacred, as the parent of scientific numbers. *Two*, or the *duad*, was viewed as the associate of the *monad*, and the mother of the elements, and the recipient of all things material ; and *three*, or the *triad*, was regarded as perfect, being the first of the masculine numbers, comprehending the beginning, middle, and end, and hence fitted to regulate by its combinations the repetition of prayers and libations. It was the source of love and symphony, the fountain of ener-



gy and intelligence, the director of music, geometry, and astronomy. As the *monad* represented the divinity, or the Creative Power, so the *duad* was the image of matter; and the *triad*, resulting from their mutual conjunction, became the emblem of ideal forms."

And after going on in this way through all the numbers, he adds, "But it would be endless to recount all the visions of the Pythagorean school; nor should we stop to notice such fancies, if, by a perpetual descent, the dreams of ancient philosophers had not, in the actual state of society, still tintured our language, and mingled themselves with the various institutions of civil life. The mystical properties of numbers, originally nursed in the sombre imagination of the Egyptians, were eagerly embraced by the Jewish Cabalistic writers, and afterwards implicitly adopted by the fathers of the Christian church. But those fancies maintained an ascendancy in public belief until a very late period, nor were the Reformers themselves exempt from their influence. Luther, whose vigorous mind was yet deeply tintured with the credulity of his age, was accustomed to venerate certain numbers with a species of idolatry. Peter Bungus, canon of Bergamot, published, in 1585, a thick quarto, *De Mysticis Numerorum significationibus*, chiefly with a view to explain some passages in the Old and New Testament. The famous number of the Beast, 666, which has so often tortured the ingenuity of the expounders of the Apocalypse, is regarded by some divines as of Egyptian descent, the archetype of the three Monads, and combining the genial and sidereal powers; being indeed only the sum of all the terms of the magic square of 6, the first of the perfect numbers, and dedicated to the sun. But we still see the predilection for Luther's favourite number, *seven*, strongly marked in the customary term of apprenticeships, in the period required for obtaining academical degrees, and in the legal age of majority."

Professor Leslie had thought fit, in this way, to vilify the Hebrew, and praise the Greek language; and, Gentlemen, you have heard from the mouth of the witnesses for the pursuer himself, what is truly the state of the fact, that it is not true, that,—in the Hebrew mode of notation,—(at least of *that* Hebrew which we, of the Church of Scotland, understand to be Hebrew, and which has been handed down to us from the days of Esdras,)—the Hebrews are not under the necessity of having recourse to

the clumsy expedient of addition to express numbers. The Hebrew language contained twenty-two distinct letters, by which the numbers were expressed. In our own alphabet are to be found letters which might have been wanted—such as *c* hard and soft, *i* and *j*, *s* long and short, and some others, which being taken away would leave not more than twenty-two letters in our alphabet; but the Hebrew had twenty-two original letters, and had also five final letters; the final letters being used in this way—the letter *s* with us, is generally printed *ſ* long in the middle, and *ʒ* round at the ends of the words. The Hebrew, in like manner, had five letters, which were written differently at the ends of the words, and these were called final letters. Taking the twenty-two original letters, and adding the five final letters, it had twenty-seven letters to mark the numbers. This has been explained to you by the witnesses for the pursuer, who have told you that by means of these twenty-seven letters, the Hebrews go on to mark numbers to 1000, dividing the alphabet into three series—9, 9, and 9; the first nine signifying *units*, the second 9, *tens*, and the third 9, *hundreds*. These being used as the present numerals of the Arabic, or unwritten characters—1, 2, 3, 4, 5, 6, 7, 8, 9, and a cypher, 0, and then 2 and a cypher, 0,—and thus the Hebrew could go on as far as we do. It was not necessary for the Hebrews, therefore, as Professor Leslie says, to have recourse to the clumsy expedient of addition to express numbers above 400, because the first of the final letters expressed 500, the second 600, and so on; and this has been the case since the days of Esdras. Some Reverend and learned gentlemen have told you this day, that a majority of learned Rabbis think this is not the case, and that a respectable minority think that it is so. Gentlemen, Cicero has said in Latin, what I may be permitted to tell you in English, that “there is nothing so absurd but what some wise man has said.”—Look at what this pursuer says of the Roman language. He has not said that the language of the Romans is the rudest and poorest of all written languages—no such thing, Gentlemen. They were not a barbarous people, *they* were a nation of warriors and heroes, and could not therefore have been accused of gross ignorance, nor could it be said that *their* language was the rudest and poorest of all written languages. But, Gentlemen, you must all be familiar with their mode of marking the number of the chapters,



as you find it in your Bibles ; and which is done in this manner ; I denotes *one*, (I) ; I and I denotes *two*, (II) ; I and I and I, put together, denotes *three*, (III) ; I before V, or one *deducted* from five, denotes *four*, (IV) ;— V denotes *five*—V and I, or one added to *five*, denotes *six*, (VI) ; I before X, or one deducted from *ten*, denotes *nine*, (IX) ; X and I, or one added to *ten*, denotes *eleven*, (XI) ; X and I and X, or *ten* and one deducted from *ten*, denotes *nineteen*, (XIX) ; and X and X and I, or *ten* and *ten* and one, denote *twenty-one*, (XXI), and so on ; the difficulty of the operation, and the unfitness of the characters for numerical computation, constantly increasing in arithmetical progression. And yet this is the style in which the learned Romans went on in noting numbers ; yet the Roman language is not called by Mr. Leslie the rudest and poorest of all written languages, on account of its unfitness for arithmetical calculation. Then the learned Professor says, a “*mighty stride*” was made by the Greeks in the perfection of their alphabet. Gentlemen, what was it ? They had only twenty-four letters, they had not twenty-seven, because they had not the three nines, which are necessary for carrying the numbers as far as 1000, at least this is what Professor Leslie says. What did the Greeks do by their “*mighty stride* ?” Why, Gentlemen, they *borrowed* three letters from the Hebrew alphabet. But, Gentlemen, they are elegant and improved in their manners and mode of notation, and they have made a “*mighty stride*” in the improvement of their alphabet. No credit is given to the rude and ignorant Hebrews for the improvement of their language, after their return from the Babylonish captivity, although that did not consist in their borrowing a few letters from their neighbours, the Hebrews, but in the invention of five new final letters. No, no, Gentlemen, that would not have suited the views of the learned Professor. And what did the Greeks do farther ? (Mr. Forsyth was here proceeding to read from a written paper he held in his hand, referring to the “*mother alphabet*” of the Greeks, which was styled the Hebrew, when he was interrupted by Mr. Jeffrey, who objected to this course, as being a quotation from written evidence, which had not been proved and put on record. The Chief Commissioner stated, that nothing of consequence had yet been done to call for animadversion from the bench, but that Mr. Forsyth could not be allowed to quote from written documents which had not been put in



evidence. Mr. Forsyth rejoined, that he would quote from the law books; whereupon, Mr. Cockburn observed that the pursuer's counsel would not differ with him upon that subject—that was quite another affair. Mr. Forsyth then resumed his argument.) Gentlemen, this is the fact as to the language of the Hebrews, even from the proof led on the part of the pursuer. Mr. Leslie having made these harsh statements regarding the language of the Bible, it would have been strange, indeed, if, in this country of Christians, some notice should not have been taken of his assertion, that the Hebrew was the rudest and poorest of all written languages, and that it had recourse to the clumsy expedient of addition in expressing numbers, while the Greek language was praised in such lofty terms. Then, Gentlemen, think of his comparison of a most important part of the Christian Revelation; that of St. John, to the Pythagorean fancies, and the dreams of ancient philosophers. If all this was to be found in a book published here, in this Christian land, and where we have a free press, it would have been strange, indeed, if it had not been noticed. The pursuer, Mr. Leslie, the author of these statements, is a Professor of Natural Philosophy in the University of this City; he is celebrated for his scientific researches; he is known over the world as a man of letters; he has received medals of distinction, and compliments for his learning and researches; he has been elected a Member of the National Institute of France, on account of his discoveries in science; and he has exhibited his experiments in London before the Royal Society, and elsewhere, with universal applause; and yet, in a book written and published by him upon the Philosophy of Arithmetic, he makes reference to the canon of Scripture in a way and manner most reprehensible. Gentlemen, he is a teacher of youth, privileged by his situation, and paid by the public, and yet he puts forth a statement, going entirely out of his way for that purpose, in a book upon Arithmetic, in which he compares the holy Apostle, St. John, to the heathen philosopher Pythagoras. Such a statement called forth animadversion, and no wonder though it was severe. The article has been read to you in detailed extracts, and the writer of it has been accused of being actuated by malice against the pursuer; but, Gentlemen, I beg you will read the context, and not take your impressions of that stricture upon the pursuer's writings from the garbled and partial extracts taken from it.

It begins thus, "Mr. Editor," (Mr. Blackwood, you know, Gentlemen, is a bookseller and the publisher of a work which has a very great circulation, a periodical Magazine, in the 35th number of which, at p. 501, there is the following statement,) "Mr. Editor, Dublin, Jan. 20th, 1820.—In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language, in his *Philosophy of Arithmetic*; though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is ignorant even of the alphabet of the language on which he thus presumed to offer an animadversion. The professional *dictum* alluded to is this:—'The Oriental nations appear generally to have represented the numbers as far as one thousand, by dividing their alphabet into three distinct classes, but the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400, and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100.' *Philosophy of Arithmetic*, p. 218.

"*The rudest and poorest of all written languages!* By my troth, Mr. John Leslie, these be bitter words! but the latter part of the sentence, by displaying the utter ignorance of the Professor, happily renders the railing of the former perfectly innocent. Indeed, so much ignorance and impertinence combined, will hardly be found, in so short a compass, in the works of any other writer of the smallest literary character. The merest smatterer in Hebrew. Any one who had read the first page of a grammar, could have informed Mr. Leslie, that the Hebrews had *not* recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear that the Professor was totally unacquainted with the letters of the language he was criticising, or he would have known that the five finals (technically called *Camnephatz*) are used to express the five last hundreds; (there is a *star* before the word "*Camnephatz*," referring to a note at the bottom of the page, where the final letters with the corresponding numbers are marked,) and therefore, that the glory of inventing the expedient, which he describes with such imposing minuteness of detail, is due entirely to himself. So



much for his qualifications to decide on the merits of Hebrew.

“But it appears to me that he has a peculiar pique against the language,—that his censure arises as much from spleen as ignorance; for the Roman method of notation is still more clumsy than this fancied Hebrew system—not only their hundreds but their tens, and even their units, being formed by repeated, and often very cumbersome additions: and yet Mr. Leslie does not pour forth the vials of his wrath on the language of Latium; nay, he even finds in this unwieldy notation, “a sample of a philosophic language,” (p. 210.) Nor is he angry with the Greeks, (whose system he highly panegyricizes, p. 11, &c.) although he knows that their alphabet is as insufficient for the purposes of notation as he supposed Hebrew to be, and that they are, in consequence, obliged to borrow three letters to supply the defect. I am pretty sure he does not know the source from which they were borrowed; and he may, perhaps, be somewhat astonished that these three letters were lent to the rich Greeks, by the poor Hebrews; Bau (6), Koppa, (90) and Sanpi, (900) being only Vau, Koph and Tzaddi. (There is a foot note here, by the writer of the paragraph thus—“Koph is 100; but as the Greeks borrowed Tzaddi final for 900, they were compelled to use some letter different from Tzaddi for 90, and they took the next to it, ק.) It may be also new to him, that the two mathematical words of eastern origin, Sepher, (p. 112) and Karatha (p. 133.) the only two oriental words of any consequence, I believe, which he quotes, are Hebrew—ספֵּר numeravit, and כָּרַת secuit. They may be Arabic also; but to enter into the controversy respecting the comparative superiority of Hebrew and Arabic, for the edification of Professor Leslie, would be as profitable as to set about demonstrating the seventeenth proposition of Euclid’s twelfth book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere.

“I do not well know how to account for this pique. The only reason the learned Professor seems to assign, is the smallness of the alphabet: certainly a very characteristic objection for an arithmetician, who values every thing by number. But though this principle may look very well in the golden regulations of the rule of three, I am inclined to think it does not succeed altogether in languages; for thus the dialect of Homer could be calculated to be far



inferior to the Romaic, and the tongue of his majesty, the Emperor of all the Russias, would take lead of the other languages of Europe by a considerable majority. We must look, therefore, for some other reason; and perhaps we may find it in the unhappy circumstances in which Hebrew is placed—it is the language of the Old Testament;—the language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume's, would say, dedicated to superstition, and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*. But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not good generalship to entrust even the details of a siege to a blundering gunner, or a rash volunteer. And I must consider the Professor as a most unfortunate, though perhaps a courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough, in other respects, to be entitled to sneer at the credulity of Luther, the dreams of the Christian Fathers, and the 'fancies' of St John," p. 230.

"Professor Leslie's *mistake*, it may be said, is a mere trifle, not worth the paper employed in exposing it. It is true, indeed, that, as no man is actually bound to know Hebrew, there is no great disgrace in making an erroneous assertion concerning this language; but I assert, that no man has a right to pass a dogmatical and insolent judgment on any branch of knowledge whatever, of which he is so wretchedly ignorant as not to know its first elements. Mr. Leslie would look, with deserved contempt, on him who should venture to call Euclid a poor mathematician, if the very sentence which conveyed the charge furnished also a proof that the critic was ignorant of the definitions of geometry. And how are *we* to look on the Professor himself? He may believe me when I tell him, that, in the eyes of those who know any thing of the subject, he makes as awkward a figure as the most deficient digit he ever 'caused modify.' (There is a foot note as to this expression; the writer says—An elegant phrase of Mr. Leslie's—"To transform the ordinary characters, (says Mr. Leslie, p. 117.) therefore, into deficient digits, I have *caused modify* their shape thus"—(then he writes the letters *sideways*)—and a very wise and pretty modification it is. For the puzzle it occasions, you need only look into the work.) He may also assure himself that the rule, *ne sutor ultra crepidam*,

is truly a golden one. He is, perhaps, a mighty respectable third or fourth-rate mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself; but when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of critics and scholars, nothing can be more pitiful. And yet (page 232) he blames Joseph Scaliger (whose name as a man of learning is *rather* higher than Mr. Leslie's as a mathematician) for quitting his usual studies to meddle with mathematics. So easy is it to perceive the 'presumptive dogmatism' of another, and to overlook our own!

"You perceive I have not said a word in defence of the Hebrew language: I thought it would be ridiculous to offer any against such an assailant. I shall, however, add, that those who are acquainted with it, know, that for simplicity of construction, regularity of derivation, conciseness, perspicuity, and force, it is not *equalled* by any language in the world; but, on this occasion, I need not appeal to Hebrew scholars: he who reads the Bible in his vernacular tongue will agree with me, that the man who attributes the extreme of rudeness and poverty to the language of the sublime lyric effusions of Isaiah, the energetic drama of Job, the unrivalled pastoral of Ruth, not to mention other splendid passages of Scripture, which instantly crowd on the memory, must be satisfied to lie under the imputation of pitiable ignorance, or still more pitiable prejudice.

"Apologizing for the length of this letter, which has grown to a much greater size than I intended, I am, Sir, your most obedient servant."

Now, Gentlemen, this is the statement; and the question is, whether the pursuer, Mr. Leslie, is able to establish that this statement was made against him *through malice*; or whether it is a reasonable statement, and within the limits of fair discussion. This question is put to you in one of the issues, in the following words, 1st, "Whether the whole, or any part of the said words are of and concerning the pursuer, and whether the pursuer is therein falsely, *maliciously*, and injuriously represented, and held up to ridicule and contempt, as ignorant of the Hebrew language, and even of the Hebrew alphabet, or as being guilty of impertinence, or of disliking the Hebrew language, merely because it is the language of the



Old Testament, and to be attacked, *per fas et nefas* ; or as being an *enfant perdu*."

Now, the question for you to try is, Is it here made out that the writer of the article I have read to you, published that statement *from malice to the person of Mr. Leslie*, or is it a lawful criticism on a printed work given to the world?

There is another question for your consideration in the issues, Did the pursuer, Mr. Leslie, go out of his way to attack the Hebrew language, merely because it was the language of the Bible, or did I step out of my way to defend it? Mr. Leslie published a book on Arithmetic, and in it he attacks the language of Scripture, and the holy apostles of the Christian religion, and I stood up and opposed him ; and the question is, Who went out of his way, and committed an offence in this matter? That is the proper question for you to determine.

Gentlemen, we have in this country the liberty of the press. It is a free press—we may write and print what we please—we have liberty to do so—but we may be punished for doing so if we go beyond the bounds of fair criticism. My plea is, that the criticism in the article I have read to you is lawful criticism. If any person places himself in a public situation, his public conduct may be scanned and criticised through the press. For instance, if he holds a public situation under government, his conduct in that situation is the subject of fair animadversion. In another way, a person may place himself in a situation which may expose him to free and full discussion. If he should become an author, and publish his writings to the world, and if I only attack him as an author and criticise his writings, I am only exercising the rights of a British subject in availing myself of the liberty of the press. The liberty of the press in this country is well known to you. We are at full liberty to discuss the public conduct of public men, and to attack or defend the measures of government, and to maintain the rights of the people through the medium of the press—we may say what we think fit of Mr. Pitt, Lord Londonderry, and Mr. Vansittart, or any other minister of the crown, in regard to their public measures ; but if we go out of that path, if we step into the walks of private life, and accuse them as bad men, as guilty of misconduct and neglect of duty in their relative situations, as husbands or fathers ; if we enter their private dwellings, and thus attack them, it will be no excuse for us to say, that they are public men, and



the servants of the public. But if we merely attack their *measures*, and are found fault with for doing so, our answer is, they have put it in the power of the public to do so, by accepting of a public office; and, in regard to that office, they are the servants of the public, and the property of the public. In like manner, if an instructor of youth in his discourses to his pupils, should instil into their minds principles contrary to the established faith, whether as a professor in an university, or as a private teacher; or, if the ministers of the Gospel in the pulpit, (and the people of this free protestant country do not go to private houses to be instructed by their priests, but to church,) should do the same thing, and we should find fault with them for doing so, through the medium of the press—we do nothing but attack them in their public characters, and we are entitled to do so. I need not tell you, Gentlemen of the Jury, that all this is right, and as it ought to be in this free country. By this means,—by means of the press,—the ministers of the government may be told when they go wrong, and their improvident and ruinous measures may be checked; at least, they may be instructed by means of the press. This advantage we possess as a free people above all other nations. But, Gentlemen, this instrument, the press, so powerful in itself, and so beneficial and salutary when well directed, is very liable to abuse. One author may publish the most violent and abusive calumnies against an individual in office—he may accuse him of vice, injustice, and neglect of duty—and he may do this lawfully; but if one man is thus entitled to accuse another, in the face of the world, of violence and corruption, through the medium of the press, another may lawfully use that engine to check and correct such statements, if they be false. In like manner, if an author publishes a work, in which, the moment it comes into the hands of the public, it is discovered that there are errors, mistakes, and fallacies; another author may lawfully publish a work to correct these mistakes and fallacies. If, in a book published and given to the world, (as is the case here,) such fallacies occur—and it cannot be said that the pursuer is infallible in his publications,—another writer may challenge the dogmas it contains; and he is entitled to do so. If he keep to the book, and does not go out of his way, to attack the author in his private capacity, he does no more than what he is entitled to do. It is no ground of complaint against such criticism, to say,

“It is very true, you have not attacked me *personally*, as a private individual, but you have attacked me as an *author*—you have cut up my book—my books won’t sell, if you are allowed to hack and tear at them in this way; I get large sums of money for my books from Mr. Blackwood, Messrs. Bell and Bradfute, &c. and they won’t look at any more of my books, if you thus go on to run them down.” My answer is, that I am entitled to bring forward against such works all the wit, and sarcasm, and ridicule that I am possessed of; and to chastise the author of them for his ignorance and presumption, if I think he has fairly subjected himself to such treatment. This I may lawfully do, if I keep to a fair criticism upon the author and his works. If I keep to these rules, it is impossible that I can be found fault with in a Court of Justice. (The learned gentleman here referred, in support of his argument, to cases tried before Lord Ellenborough in England, and to Starkie’s Treatise on the law of Slander. He also referred to a case tried before the same judge, and reported by Campbell, where his lordship laid down the law—that authors and their works were the fair subjects of the severest criticisms; and then proceeded,)—Gentlemen, I shall now refer you to a case much stronger than the present. It is the case of Sir John Carr, Knight, *v.* Hood, also to be found in Starkie’s book, (p. 266.) Sir John had travelled over different parts of the Continent, and of this country also, and had published the result of his observations, under the title of “A Stranger in Italy”—“A Stranger in France”—“A Stranger in Ireland”—and so forth. And while a similar work, containing an account of the observations he had made in a tour through Scotland, was in the press, a person wrote a book, and published it, in which he supposes that these productions were the works of Sir John Carr, and he supposes Sir John to be sitting in his study writing out his notes *before* setting out upon his Irish tour, and treats him in such a manner as to make him ridiculous, representing him as complaining of its being an uphill work, and floundering in the midst of it; and he prefixes to the book a picture of Sir John on his return from Ireland, weeping, and holding a handkerchief to his face, with a man behind him, bending under a load of books, marked as Sir John’s Notes of his tour, and carrying his wardrobe in a pocket handkerchief. But, Gentlemen, it will be better that I read the case to you, and, in doing so,



I shall keep strictly to the law report. The declaration, or the summons, as we may call it, (Mr. Jeffrey here said, —The declaration is not the summons, but what is equivalent in England to our condescendence, containing a specification of the facts,) Mr. FORSYTH.—The declaration then states,—That the plaintiff “ had been the author of several productions, called, &c. but that the defendant, intending to expose him to contempt and ridicule, had published a malicious and defamatory libel concerning the said Sir John, intituled, ‘ My Pocket-Book, or Hints for a righte merrie and conceited tour, to be called, the Stranger in Ireland in 1805, by a Knight Errant.’ ” The same libel, containing a malicious and defamatory print of and concerning the said Sir John and his books, called “ Frontispiece,” and intituled, “ The Knight leaving Ireland with regret; ” and representing, in the said print, a certain false, scandalous, malicious, defamatory, and ridiculous representation of the said Sir John in the form of a man of ludicrous and ridiculous appearance, holding a pocket handkerchief to his face, and appearing to be weeping; and also a certain false, malicious, and ridiculous misrepresentation of a man of ludicrous and ridiculous appearance, following the representation of Sir John, representing a man loaded with and bending under the weight of three large books, one of them having the word “ Baltic ” printed on the back thereof, and a pocket handkerchief appearing to be held in one of the hands of the said representation of a man, and the corners thereof appearing to be held or tied together as if containing something therein, with the printed word “ wardrobe ” depending therefrom, for the purpose of rendering the said Sir John ridiculous, and thereby meaning that one copy of the said first mentioned book of the said Sir John, and two copies of the book of the said Sir John, secondly above mentioned, were so heavy as to cause a man to bend under the weight thereof; and that his, the said Sir John’s, wardrobe was very small, and capable of being contained in one pocket handkerchief.” The declaration concluded by laying, as special damage, that Sir John had been prevented from selling to Sir Richard Phillips, for L.600, the copyright of a book of which the said Sir John was the author, containing an account of a tour of the said Sir John through part of Scotland.

Lord Ellenborough, as the trial was proceeding, intimated an opinion, that, if the book published by the defendant



only ridiculed the plaintiff *as an author*, the action could not be maintained." And his Lordship further observed,—"Here the supposed libel has only attacked those works of which Sir John Carr is the avowed author; and one writer, in exposing the follies and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest weapon that can be employed for such a purpose. If the reputation or pecuniary interests of the person ridiculed suffer, it is *damnum absque injuria*. Where is the liberty of the press, if an action can be maintained on such principles? Perhaps the plaintiff's Tour through Ireland is now unsaleable, but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and inanity of his compositions? Who would have bought the works of Sir Robert Filmer after he had been refuted by Mr. Locke? But shall it be said, that he might have sustained an action for defamation against that great philosopher, who was labouring to enlighten and ameliorate mankind? We really must not cramp observations upon authors and their works; they should be liable to criticism, to exposure, and even to ridicule, if their compositions be ridiculous; otherwise, the first who writes a book upon any subject will obtain a monopoly of sentiment and opinion respecting it. This would tend to the perpetuity of error. Reflection on *personal character* is another thing. Show me an attack on the moral character of the plaintiff, or any attack upon his character unconnected with his authorship, and I shall be as ready as any judge who ever sat here to protect him; but I cannot hear of malice on account of turning his works into ridicule."

The counsel for the plaintiff still complaining of the unfairness of this publication, and particularly of the print affixed to it, the trial proceeded.

"Lord Ellenborough said—Every man who publishes a book commits himself to the judgment of the public, and any one may comment upon his performance. If the commentator does not step aside from the work, or introduce *fiction* for the purpose of condemnation, he exercises a fair and legitimate right. In the present case, had the party writing the criticism followed the plaintiff into domestic life for the purposes of slander, that would have been libellous; but no passage of this sort has been produced, and even the caricature does not affect the plaintiff,

except as the author of the book which is ridiculed. The works of this gentleman may, for aught I know, be very valuable; but whatever may be their merits, others have a right to pass their judgment upon them—to censure them, if they be censurable, and to turn them into ridicule, if they be ridiculous. The critic does a great service to the public who writes down any vapid or useless publication, such as ought never to have appeared. He checks the dissemination of bad taste, and prevents people wasting both their time and money upon trash. I speak of fair and candid criticism; and this every one has a right to publish, although the author may suffer loss from it. Such a loss the law does not consider as an injury, because it is a loss which the party ought to sustain. It is, in short, the loss of fame and profits to which he was never entitled.

Nothing can be conceived more threatening to the liberty of the press than the species of action before the Court. We ought to resist an attempt against free and liberal criticism at the threshold." The Chief Justice concluded by directing the Jury, that, if the writer of the publication complained of had not travelled out of the work he criticised, for the purpose of slander, the action would not lie; but if they could discover in it any thing *personally slanderous* against the plaintiff, *unconnected with the works he had given to the public*, in that case he had a good cause of action, and they would award him damages accordingly, —VERDICT FOR THE DEFENDANT."

Now, Gentlemen, you have heard the verdict of an English Jury, and the sentence of an English Judge, in a case where the ridicule complained of was greater, in a tenfold degree, than it is here, both of the person of the author and of his books. His books were taken to pieces, and cut up, sentence by sentence; but, because the critic had not descended into his private life, but kept to his works, he was acquitted, upon this principle, that, if a writer keeps to the subject-matter of the work he is criticising, however severe and sarcastic he may be, he is safe and protected under the liberty of the press.

It is true that the person who corresponded with Mr. Blackwood in the present case attacked Mr. Leslie's book upon Arithmetic, but he did nothing else. It is said the writer of the article was actuated by malice against the pursuer, merely because he attacked the passage in his book which he thought was abusive of the language of re-

ligion. That single sentence is said to have excited all this malice ;—it is said to be the beginning—the middle—the end—the top, and the bottom of it—and that I had attacked his religious principles. Now, in the first place, I said merely that the passage in the book was incorrect—that the writer of it was ignorant of his subject—that the language of religion was attacked merely because it was so—that the religious sentiments of the *author* were not sound ; and I said so boldly—I spoke this of him *as an author*—I did not go into his private life. I spoke of him, indeed, as a Professor in the University, as I would do of a minister of state ; but I spoke of him also *as an author*. I ascribed to him erroneous religious opinions, and of having a dislike to the Hebrew language because it was the language of our holy religion ; which he had denounced as the rudest and poorest of all written languages. I said he was ignorant of the language he was criticising, and I said that his ignorance was demonstrable to the youngest Hebrew scholar. He said it was necessary for the Hebrews, in calculating numbers, to have recourse to the clumsy expedient of addition. I denied this, and I said that he was ignorant even of the letters of the Hebrew alphabet. And it is worthy of notice, Gentlemen, that, after I said all this, Mr. Leslie published the second edition of his book, in which, at page 242, in a note, which has been read to you, he makes an additional statement upon the subject, with a view to correct the error in the first. Why, Gentlemen, when he was adding these notes, he might have added other explanations. He has told you, at page 241, that the Greenlanders reckoned by *fives*. To express *twenty*, they open the fingers of one hand *four* times ; and, to signify a *hundred*, they show all the fingers and toes *five* times, or say *five men*.” He tells you that the same terms for numbers prevail among all the various tribes, from Madagascar to New Guinea and the Philippine Isles. He tells you of the poverty of the Ende language, and of the Flores ; he then says,—after alluding to the poverty of the language of the Malays and Javanese, in which latter language the name of one bit of gold signifies 400, and two bits 800,—“ The JEWS, *we have seen*, followed nearly the same idea ; the higher numbers, as far as one thousand, having been represented in the *ancient Hebrew* by repeating the alphabetic character for 400.”

Gentlemen, this is the only passage where he makes men-



tion of the *ancient* Hebrew in his book ; but still he speaks of the “ *Jews*.” You will be so good now as notice the plea on the other side of the bar. When a student of divinity is called on by the rules of the General Assembly of our church to explain a passage in the Psalms, in the *Hebrew* language, there can be no doubt of its being the *Chaldaic* version that is referred to. Professor Leslie’s ignorance is therefore demonstrable. If the student, in explaining the Hebrew numbers, should say that their mode of notation was by taking 400, and adding 100 to mark 500, and so on, he would have been justly accused of ignorance. Some of the learned Rabbis this day examined before you, have said, that the final letters were brought in *before*, but that some have thought they were not introduced until *after* the birth of Jesus Christ ; and one of them has even said, that the pursuer might be ignorant of the Hebrew language, although he might not be ignorant of the numerical powers of the five final letters. If the Hebrew language be what I understand it to be, and as every one here must understand it to be, viz. the *Chaldaic* character, it is clear that Mr. Leslie did not know the letters of that language at the time he wrote the passage objected to, when he did not even know the manner of noting used by the Hebrews. But his defence is, that he meant the *Samaritan* character, or the *ancient Hebrew*, and with a view to this defence, he has introduced into this second edition of his book, the word “ *ancient*,” instead of saying, in a manly, open, and candid manner, that he had fallen into a mistake in his first edition. He was told by me that he had done so, yet he does not acknowledge his error, while it is evident that the words “ *ancient Hebrew*,” were put in, in the note to which I have referred, merely to give him an opportunity of shaping his defence in the way he has done. Or, if this supposition be incorrect, my learned friends on the other side of the bar, seeing that it was impossible to defend Mr. Leslie upon his knowledge of Hebrew, must have thought of getting him out of the scrape by saying, when he first published his book, that he was writing about the *Samaritan* language. Gentlemen, they might have said the same thing as to the Latin ; but what would the Scotch, English, and Irish students at this University understand by this expression,—“ The *Hebrew language*, the rudest and poorest of all written languages,”—would they conceive it to be the *Samaritan* ? The Sama-

ritan language does not contain more than the five books of Moses, while the students are required to study the whole of the Scriptures, including the *Psalms* and the *Prophets*, in the *Hebrew* language. But now let us see what the learned gentlemen, who have been examined before you, say upon this subject. One of them has told you, that a *majority* of the learned are of opinion that the present Hebrew character—or the *Chaldaic*—was used in the sacred writings immediately after the return of the Jews from the Babylonish captivity; and that a *respectable minority* are of a different opinion, and that it was not introduced till a later period; and you have been told of one who was of opinion that it is as old as the days of Moses, and the Flood. As men of common sense, you must understand that the Hebrew language spoken of by the pursuer, as the rudest and poorest of all the written languages, is the language which, in the church of Scotland, is termed the Chaldaic character, but which is usually called Hebrew. If Mr. Leslie meant some other Hebrew, it is not what the laws of the Church of Scotland oblige our youth to study. If he meant the Samaritan character, he should have said so in his book, and, in that case, we would not have been here to-day. Why did he not say so, if he meant the Samaritan? If he had put in his book the word “Samaritan,” and not the word “Hebrew,” I would have understood him, but he has not done so. But he tells you his reputation is attacked, and that he is accused of ignorance of the Hebrew language, which I say he does not understand, and for this he claims damages. Why, Gentlemen, we may suppose a Frenchman to be accused of ignorance and presumption, for having said in a book, that the English language, as used by Milton, by Dryden, by Pope, and by Addison, was the rudest and poorest of all written languages,—and that he answers this accusation by saying, Oh no, I did not mean the English language, as it was spoken and written at the time when these great men wrote. I meant the English, as it was spoken in the days of King Arthur, or the Saxon Heptarchy, and I bring my action of damages, because it was not your language that I meant. Gentlemen, you will say that all this would be ridiculous enough, and that no court of law could possibly entertain such a case, and yet you see the very same thing done here. The pursuer says, I did not write this of the Chaldaic language, I only said this of the Hebrew. And the

Frenchman says the same thing of the English language, that he meant the Saxon. But, Gentlemen, I pray you to observe, what the pursuer says in the note I formerly read to you. He says, “the Jews, we have seen, followed nearly the same idea; the higher numbers, as far as a thousand, having been represented in the *ancient Hebrew* by repeating the alphabetic character for 400.” You see here, that the “Jews” and the “*Ancient Hebrew*” are put together; but there is a very great distinction between them, and this has been proved to you this day. You know from the sacred Scriptures, that a revolt happened among the Jews in the reign of Rehoboam, the Son of Solomon. Two of the tribes remained faithful to their king, but ten of the tribes followed Jeroboam to Samaria, and he was declared king of Israel. You know also that the kings of Israel erected a Temple on Mount Gerizzim, and set up a Golden Calf, which the people of Israel worshipped as their god, and that they never afterwards went up to Jerusalem to worship in the Temple; and from that time, the Jews had no dealings with the Samaritans. You know this historically from the Old Testament, and in the New Testament Scriptures, you have it recorded, that the Samaritan woman expressed her surprise to our Saviour at the well,—when he asked for water,—that he, who was a Jew, should ask water from her, who was a woman of Samaria. Here Jesus Christ is spoken of as a Jew, as descended of the Jews—who were these Jews? They were those who continued the line of prophecy, and the line of our Saviour as the Messiah promised to the fathers, and the language of prophecy was that of the Old Testament. You have been told by the witnesses, that the Chaldaic language was introduced by Esdras on the return of the Jews from the Babylonish captivity, because the people, during their residence at Babylon, had entirely lost their original language, and therefore it was necessary to have a version of the Scriptures written in the Chaldaic language, as that which was spoken by the people. Now, I presume the fact to be this, that Esdras found a copy of the book in the Temple of Solomon, where it had remained a long time unnoticed, and that it was immediately read and explained to the people, in the language in which it was written, and which was their own. The language of a whole people could not easily have been destroyed in seventy years, when they were all living together, and con-



versing in that language, and it is well known the Jews were remarkably attached to their language, as being that of the oracles of truth. I think, therefore, Gentlemen, that all this which you have heard about the change of the language, is entirely a mistake, and that the original language continued to be used as the written language of the Jews. The book contained, besides the books of Moses, the Psalms and the Prophets, which, at least the Psalms, were in daily use among the people, and which formed an essential part of their religious worship. How is it possible then to understand, that the original language could have been totally lost? And can you allow this gentleman, the pursuer, when he is thus foiled upon his knowledge of the language, to turn round, and make such a profession as he has done here—which he would not have resorted to but from necessity, and which is but a mere quibble—"It is true I wrote about the *Hebrew* language, but I meant the *Samaritan*." Gentlemen, this will not go down. The person who wrote this article, said that it was the *Hebrew language*; and I said that the man who said so, did not understand the Hebrew language. This is all I did say, and that, you will allow to be the interpretation of charity. I call your attention to what he says, "But the Hebrew, the rudest and poorest of all written languages." If he meant the Samaritan, he should have said so. If he made the statement in ignorance, it was certainly a piece of presumption in him to write this of a language of which he was ignorant. If the Hebrew language was the language of the Prophets, and, being so, this gentleman chose to tell the world that it was the rudest and poorest of all written languages, I consider that it was a stretch of charity to say of this man, that he did it in ignorance of the language he was writing about; for he was holding out his great credit as a man of science and research, and of a name known in the literary world, to run down the language of the Bible, which we, in this Christian country, hold in respect and veneration. I have assumed that he was actuated by certain motives when he wrote this passage, that it proceeded from ignorance, or some quality different from that which should influence the conduct of one who had a correct notion of the language of the Bible and of the Christian faith. Every *divine* does the same thing in writing against his antagonist in a polemical controversy. Every person writing against the opinions of another, ascribes

some reason or other for the statements of his opponent—and this is what I did.

He tells us that the Hebrew language is the *rudest* and *poorest* of all written languages—and he accuses me of malice for contradicting him, and saying that he must have said so from spite to the language of the Bible. What reason had I to dislike him personally for making this statement? He gives a very bad reason for the expressions he has made use of in his book—he says it is the *rudest* and *poorest in respect of notation*. Hate him! I no more hate him than I hate Chian-Cho-Chu, the King of China. I do not know him, and therefore I do not hate him—Hate his book! I do not hate *it*—I cannot entertain such a feeling for a book. But I said this gentleman hated the Hebrew—not for its being the *rudest* and *poorest* of all written languages, for it is evident he does not know the language; but he hated it for what it contains. The only book of ancient Hebrew in existence is that which contains the five books of the Old Testament, written in the Samaritan character; and, therefore, how a man, not knowing this, could have been accused of hating the Hebrew language, which is written in the Chaldaic character, is not quite intelligible. But there is more than this; he makes a *false* statement upon the subject. He had no warrant for saying that it was the *rudest* and *poorest* of all written languages. He had none whatever for saying so. A language may be said to be a poor and a rude language, when it *has not the power of expressing ideas*; when it has not a word for a “chariot,” a “horse,” or for a “heaven.” I understand the Hebrew language to be what is called the *Chaldaic*, and if Mr. Leslie had looked at the Hebrew Bible, *as written in that character*, or if he had even looked into the vernacular edition of it, which is in the hands of all of us, he would have seen good reason to alter his opinion of the Hebrew language. In the very commencement of the book, he would have found these words, “Let there be light and there was light.” An expression which has been regarded by the greatest men in every age as one of the sublimest ideas that can be conceived. Then, look at the story of Abraham, the Father of the Faithful, and his son Isaac; then to the affecting history of Joseph and his brethren; and see if, in all the Greek language, which this gentleman so highly eulogises, there is to be found finer language, or more pathetic sentiments. And then there is the Consecra-

tion prayer of Solomon, the son of David, in which are those sublime expressions, "But will God indeed dwell on the earth? Behold the heaven, and heaven of heavens cannot contain thee; how much less this house that I have builded." Then there is the beautiful pastoral of Ruth; there is war; there is peace; there is legislation; look to the laws of Moses, and say where is there loftier expressions or juster conception, to be found in any language. And all this too, in a language which this gentleman describes *as the rudest and poorest of all written languages*. Then, it prescribes laws for the regulation of the intercourse of the people in the common walks of life. Look into the book of Job; to the Proverbs of Solomon, where he speaks of the gold and the tin, and all the valuable metals; look at the book of Ezekiel, the 27th chapter, where you will find enumerated almost all the wares of the present day. There are ships; there is trade and merchandise. In short, it is plainly impossible for any man to look into the Bible, turn up any part of it you please, without being immediately convinced that the people who put forth that Book, did not possess the *rudest and poorest of all written languages*. Without enumerating more of the books in the sacred volume, (for it is a collection of books,) I shall only refer to the book of Kings, in which the royal botanist is said to have spoken of "Trees, from the cedar tree that is in Lebanon, even unto the hyssop that springeth out of the wall; and also of beasts, and of fowl, and of creeping things, and of fishes." Nay, more; these Scriptures are held in such high respect, as containing the most valuable information that can be given to the human race, that we know that societies exist every where, especially through this country, in which there are more persons united of the poorest class of the people than in any other, who are zealously employed in distributing these Scriptures all over the world, and translating them into all the spoken languages; and here I may be allowed to say, that we are a commercial people, that we are, therefore, *as a nation*, interested in the welfare of all the nations of the earth, and that, on that account, I think, this great work should not be left to the unassisted exertions of humble individuals, but that the government should interfere, and take the burden upon themselves. I would call upon the pursuer, to show me where there is one book to be found, which, like this, could be offered to all nations, and be understood by the people



of all languages, containing in itself more correct notions of business, trade, style, imagery, gold, silver—every thing, in short, of which it would be for their advantage to be informed. Yet this is the book, the language of which is described as being “*the rudest and poorest of all written languages.*” The hatred to the language which the pursuer seems to have entertained when he made this remark, could not have been ascribed to the language itself; that could not be, for he seems ignorant of it. It must have arisen, not from this cause; it must have been from something else. What tempted him to *write* this, if he did not mean to *say* so, and when the youngest Hebrew scholar could have contradicted him, is more than I can conjecture, unless it was from the motive which I ascribed to him. It is said that I have accused him of being a member of the infidel sect of Hume. Who was it that went off his way to provoke such a statement? Did he not first attack the language of Scripture in his book, not upon the meaning of the language, but merely as being the language of the Scriptures, as being the language of that people, to whom our Blessed Saviour said, while upon earth, “Search the Scriptures, for in them ye think ye have the words of eternal life, and they are they which testify of me.” And what Scriptures did Christ allude to? Were they the *Samaritan*? No. It was to the Scriptures of the Prophets, and the Psalms—the *Chaldaic*. It could be no other. Now, is it to be tolerated, that the language of these Holy Scriptures should be attacked, as the pursuer has done, and that no man should rise and lift up his voice against it? It was certainly not necessary for “Blackwood’s Magazine” to take up the cause of the Christian faith; it needed no such defence. “The faith of Christ is founded on the rock of ages,” and “the gates of hell shall not prevail against it.” Yet this learned man, calls the “*Revelations*,” contained in these holy books, the “*fancies of St. JOHN*,” not indeed of the *Apostles*, but he refers to the *Apocalypse*, and to the number of the beast. This mathematician, if he had had that regard for the feelings of mankind, and to our holy religion, which he ought to have, would,—like Sir Isaac Newton, and other eminent men, whose names rank higher than that of this pursuer in the scientific world,—have revered as sacred the language of these holy books; and would have behaved much better than he has done, and have done less injury to his own fame, if he had imitated their great example.

Yet this Gentleman prosecutes us here, because we say that he ridiculed the Sacred Scriptures. Was not this writer, was not every person in this country, entitled to take offence at this statement, which described the Hebrew language, which they were required to spend so much of their time in studying, as the *rudest* and *poorest* of all the written languages? I was going to quote to you the testimony of Sir William Jones in favour of this language, which he describes as containing passages of the most exquisite beauty, and in its poetry excelling in grandeur and sublimity any other language that can be written; but your time will not permit me to do so. This is the way in which this learned person speaks of the Hebrew language, and the way in which it has ever been treated and spoken of by all men of science and worth: and yet this professor of mathematics takes upon himself to tell us that it is the *rudest* and *poorest* of all written languages, while the Church of Scotland, again, recommends and requires us to study this language, as the language of that book which contains all that is essential for us to study and to know.

Bishop Beveridge has given us a table of numbers, from 1, 2, 3, &c. down to 100, in the Hebrew, Samaritan, and Greek characters. In that table the Hebrew characters are as distinct from the Samaritan as the Samaritan from the Greek; and yet, Gentlemen, we are here prosecuted for calling that the Hebrew language, which he calls Hebrew. A variety of expressions have been founded upon by the pursuer, by which he says we have injured him in the eyes of the world as a philosopher and a scholar; but, after Sir John Carr's case, which I read to you, I have little doubt you will consider these expressions as nothing more than fair criticism. We have not, as was done in that case, exhibited to the public a picture, in caricature, of Professor Leslie in his study working at an old copy of his Philosophy of Arithmetic, and bargaining with a bookseller to take it off his hands and offer it to the public as a new and improved edition of the work; yet I hold we were just as much at liberty to do so, as was done in the case of Sir John Carr. He, Mr. Leslie, went out of his way in his Treatise on the Philosophy of Arithmetic, to attack the language of the Sacred Scriptures, and, in ascribing to him the only conceivable motive that could have induced him to do this, I am accused of having said that he was actuated by a dis-

like to the language of Scripture, merely because it was so; and that his conduct was worthy of one of the infidel sect of Hume. If I said this, I was probably not far wrong. Gentlemen, you will perhaps recollect, that several years ago, this learned Professor published a book upon Heat; the book itself is not produced in process; but no matter, the fact that he did so, is matter of history, which cannot be disputed; and, in a note upon that book, he stated what was considered by many to be contrary to the orthodox doctrines of our national church. This was said of him publicly. Nearly one half of the members of the General Assembly of the Church of Scotland said the same thing. This learned gentleman, the pursuer, seems to be rather unlucky in his notes; but on this occasion he escaped the censure of the church, only by a very narrow majority, the votes being 80 to 96. (Mr. Jeffrey called to order, and insisted that Mr. Forsyth was travelling out of the record. Mr. Forsyth thus resumed,) I must say this, that a man who travels out of his way to discourage the study, and throw contempt upon the language, of the sacred Scriptures, by calling it a poor and rude language, cannot complain of injustice, if his writings be treated with that contempt which they deserve. He has treated the Revelation of the holy apostle St. John with ridicule; and he cannot complain if his own works are treated in the same manner.

Having thus got through the heavy part of the case, I shall now advert to some of the remaining circumstances. The pursuer complains that I have called him a "blundering gunner." In that, I really do not see that I have been far wrong, as it is evident that he fell into a mistake in his first statement regarding the Hebrew language, which he has attempted to correct in the second edition of the work. A man who sits down to criticise a language, should certainly know something of that language; and yet I think I have shown pretty plainly that when he wrote this paragraph, the pursuer, Mr. Leslie, did not know the letters of the alphabet. He complains that I call him an "*enfant perdu*," which, in the English translation, means "a skirmisher in the front of the line;" one would suppose that was rather an honourable station to be placed in. (Mr. Jeffrey, not a "*skirmisher*," it means "*forlorn hope*.") The explanation of the word "*enfant perdu*," as given by the French Academy, is, as I have stated, "*a skirmisher in front of the line*," and I trust that you are now satisfied, Gen-



lemen, that the pursuer, Mr. Leslie, is nothing better than a mere *skirmisher*, when he presumes to attack the Hebrew language. He complains that I have called him “dogmatical and presumptuous.” It is true I said so, and I certainly do think him abundantly so. I am accused also of having said that he is a third or fourth rate mathematician; he may be more for any thing that I know, but that is my opinion, and I have a right to state it to the public. Then, it is said, I have called him a refrigerator of any degree he pleases; why, Gentlemen, he brags as much of his *cooling* as of his *heating* qualities; but all this, and a great deal more, I submit, is within the bounds of fair criticism on the author of a printed work.

In short, the whole case before you is this. The pursuer, Mr. Leslie attacked the language of the holy Scriptures, calling it the rudest and poorest of all languages; I stepped forth and defended it, and for that, and that alone, do I now stand here. He has brought me here by saying that the language of the Scripture is the rudest and poorest of all languages; and I am certainly entitled to defend myself by showing that it is not. I trust that Mr. Leslie has not the monopoly of the free press of this country. Through it he has attacked the language of the Scriptures of truth; and I have defended it, and I hope and trust to find in them, in the language of our blessed Saviour, the evidence of our faith in him as the author of our salvation. The pursuer, Mr. Leslie, has gone out of his way, praising the language of the Greeks, and running down that of the Hebrews, who were the authors of part of the Greek alphabet, and I chastised him for doing so.

I come next to the alleged plagiarism, the issue upon which is in these terms: “It being also admitted, that the fortieth Number of the said magazine, published by the defender at Edinburgh, on or about the month of July, 1820, contains the following words, *viz.* ‘The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew. By the way, on looking over the last number of Dr. Watt’s *Bibliotheca Britannica*, I have discovered, with amazement, that that celebrated personage was a poet in his youth:—why don’t you review his *Phoenix Park*, *Killarney*, &c.?’ I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie’s monstrous plagiarism of his theory of heat, from

an old volume of the Philosophical Transactions? For shame.' Whether the whole, or any part of the said words, are of and concerning the pursuer, and falsely, maliciously, and injuriously represent and hold up the pursuer to ridicule and contempt, as being a plagiarist, to the injury and damage of the said pursuer?"

Before proceeding to notice this issue, I may observe, that many questions and disputes have occurred about plagiarism, and where there appears to be no doubt about the originality of an invention, if it is of a useful kind, the party usually takes out a patent, and probably after incurring that expense, discovers that the patent is of no use, as the invention was no new discovery. I mean this remark to apply to profitable inventions chiefly, as to which disputes sometimes occur, and the parties go to law. In the literary world also, discoveries are made which are not always profitable, and disputes frequently occur as to the property; but these disputes should never be made questions in courts of law, and accordingly it is very seldom done; for although the law should say that one or other of the litigants was the original inventor, and although nothing appeared to the contrary at the time, it is very likely, after incurring much expense and vexation in the settlement of the dispute, an old book would give the lie to all. You cannot go to a Jury with such a case. No, Gentlemen, the only way is to go before the public, and state to them the evidence of your being the author, and the public will judge of that evidence. Most of the eminent men of science have been engaged in similar disputes. Newton and Leibnitz carried on a paper war about "fluxions," but they did not go to law. In our own days, we have seen fierce disputes as to the invention of the "safety lamp" to be used in mines. Sir Humphry Davy claimed the honour of that invention, and it is generally believed he had the best right; but others disputed his right to it; yet they did not go to law, or think of claiming £5000 damages against each other, for inventing and making use of a lamp to prevent colliers from being smothered in coal pits. That, however, was a much more valuable discovery than this of "making cold." I wish the pursuer would come and let us see what he can do with it; we have much need of it at present in this hot weather. There was also that very pretty invention of Dr. Brewster's, the "Kaleidoscope;" that perfection of "die-

dies;" but, Gentlemen, it was a very serious matter—a patent was taken out for the invention;—and many people are of opinion, that it is a more useful and pleasant invention than this of the pursuer's, of "making cold." It is not, certainly, entirely useless; it may be very convenient for producing bits of ice for making ice cream in hot weather; but in this climate, we have not always occasion to complain of heat. I have seen no instance of this kind where parties go to law, to claim damages for being deprived of the glory of such a discovery. There was also the discovery of the circulation of the blood; of which, I believe, Hervey first claimed the merit, and yet a learned Rabbi may be found to say, that a respectable minority of learned men will tell us he was not the discoverer of it. There is the case, likewise, of "Ossian's Poems," which was alleged to be a case of notorious plagiarism; it was said to be a translation of M'Pherson's, who was openly called a plagiarist. And there was a dispute also about Allan Ramsay's "Gentle Shepherd," whether it was written by him or not. To the public it was of little consequence who wrote that pastoral; it must have been written by somebody. In none of these cases did the parties go to law.

Gentlemen, this is the first case of such a nature, and I hope it will be the last. In point of law, the action is ill-founded. "I said that his theory of heat was a monstrous plagiarism from Nairne, and I asked the Editor of the Magazine, why he allowed Dr. Brewster to have the merit of pointing it out. Gentlemen, it is not denied that Dr. Brewster did distinctly accuse the pursuer of this plagiarism. If the pursuer could have done so, why has he not denied it? He had it in his power to satisfy you, and to satisfy the public also, on the point, if he had chosen to take the trouble. I gave him Dr. Brewster's name, as the author of the assertion, that he was a plagiarist; and why then, did he not call on Dr. Brewster, and put the question to him, when he would at once have ascertained whether or not he was the author of that charge, and his reasons for saying that he was a plagiarist, if the Doctor himself was the first that said so. Gentlemen, he has not done this, and therefore he cannot come against me on that account. Starkie says in his book, at p. 244, "a person repeating the slander which he has heard from another, will, in some instances, be justified, provided he, at the time of repeti-



tion, declare the name of the person from whom he heard it.

What I said was this,—that Dr. Brewster said the pursuer had borrowed from Nairne's experiment. I did this, not generally indeed; but I gave the name of a man very well known to the scientific world, and a man of great reputation; and I now state to you, that, having done this, the present action against me as to this issue, is wholly irrelevant.

Allow me to make one remark on this point of the case—about "*making cold*." In this particular summer, if one could make the air a little colder, I should be very glad, but in general, we have no reason to complain of heat. A little freezing might do us good at present\*. A foreigner, after residing some time in this country, speaking of the climate of Scotland, is reported to have said, that we usually had *nine months of frost and snow, and three of cold weather*. Unless, therefore, the cold could be as easily dismissed as produced, we will probably be as well without it; for I am much mistaken, even after the Union Canal proprietors have expended upwards of £100,000, in making a canal to the westward of this city, in order to bring in coals to Edinburgh, if we do not find it cold enough during the ensuing winter. The pursuer's discovery of the mode of producing cold is merely a philosophical experiment, and cannot be of much general use to us. But please to recollect what this discovery was. It was well known before. I will not say that it was so well performed before Mr. Leslie exhibited it; but Mr. Nairne said that heat was produced, and that cold was produced, in particular situations. In all cases where solid bodies pass into a fluid state, and evaporation takes place, heat is absorbed and cold is consequently produced. It is so in the case of water, and also in the case of ether. Take the example, which is familiar to us all, of a pot on the fire. Put a pot on the fire, and make the fire as strong as you can, and put water into the pot, it won't become red hot so long as there is water in it, because the water being turned into air or vapour, by the action of the fire, carries off the heat from the metal of the pot; in other words, evaporation produces cold. Now all this is well known. Mr. Nairne makes the same experiments that Mr.

\* Referring to the heat of the air in the room, from the crowded state of the Court.

Leslie does with the air pump, and Professor Leslie may have been looking to Mr. Nairne's account of his experiments, at the time he published his *Essay on Heat*. I say this much, to justify myself as a critic. The philosophical Transactions of the Royal Society are said to be open to all the world. It is true they are so; but we do not read them. Many learned men have not read them. Professor Leslie might have done so; and I have little doubt that he read in them the details of Mr. Nairne's experiments. But another gentleman might have looked at them, and thought that he saw in Nairne's account the same thing done that was done by the pursuer. Professor Leslie takes out the air from the receiver of the air-pump; he puts in water into a vessel, which he places in the receiver, and he then puts sulphuric acid under it. He draws out the air by working the pump, and the water boils at 120 degrees of Fahrenheit's thermometer; but water boils at a lower degree than 120. De Luc goes to the top of the Alps and makes his experiments, and he there finds in that elevated situation, where the pressure of the atmosphere is much less, that water boils with less heat. Professor Leslie takes the air pump, and he sets in the receiver a basin of water, and puts sulphuric acid under the receiver; he then draws out the air by working the pump, and the water boils. The water rises at 78 degrees less than the temperature of the open air; the steam is taken off in a rapid style; and the heat is reduced in the water below 32 degrees, which is the freezing point. Professor Leslie thus makes ice in a very pretty manner.

Another gentleman hears of Mr. Leslie's experiments. He reads of them in his retirement in the country. He sees that an air-pump is used; and he sees sulphuric acid applied under the receiver. Mr. Nairne, by means of sulphuric acid, took the moisture out of air, which is exactly what Mr. Leslie does. He finds Mr. Nairne taking ether, and putting it into the receiver of the air-pump. He works the air-pump, and takes out the air in the ether. This rapidly takes away the heat, and produces cold; and when the operation is completed, he examines the receiver, and finds ice or frozen ether remaining. One of the witnesses examined this day, told you that Mr. Nairne supposed he had froze ether, but that, in the opinion of the philosophic world, he had only frozen a little water in the ether. This may be all a jest, but so it is; it is pub-

lished to the world. Mr. Leslie publishes a book on the theory of heat; and a person reading it in the country thinks he has formerly read all this in Mr. Nairne's account of his experiments. He finds the elements are the same in both. Mr. Nairne, it is true, had a different object in view; his purpose was to endeavour to produce dryness, or cold in ether, and Mr. Leslie had the merit of doing the same thing with water. But he sees Mr. Nairne working in the same way, and with the air-pump. He finds him absorbing moisture from water, and producing ice by drawing off the air, and freezing ether along with it. Now, Gentlemen, *putting that and that together*, he thinks he sees Mr. Leslie *ploughing with Mr. Nairne's heifer*; and he says so to the world. Dr. Marcet has said that Mr. Leslie was right in his experiments, though he did not understand the mode of its being done at first, and so do I. Mr. Leslie saw then, all the materials of his experiments, as well as their principles, were known before; and though Mr. Nairne saw them also, he did not *combine* them, but Mr. Leslie did; and that is the discovery he has made. But though all men must admire it as an ingenious discovery in chemistry, which I also do; yet I hope you will not say,—although this discovery of Mr. Leslie's was only made in 1810, and I took it upon me to call back the attention of the public to Mr. Nairne's experiments in 1777, and to say that this later pretended *discovery* is a *plagiarism* from an old volume of Philosophical Transactions,—I have done that which is wrong, and that I have attacked the pursuer from envy and malice. I am not surely to be accused of malice for having done this. When I see water, air, ether, and sulphuric acid, used in both experiments, and that Mr. Leslie had no other merit, than in combining them in a different way from what Mr. Nairne did in his experiments, I am not certainly to be accused of malice when I state this to the public, and that I think the one has borrowed from the other. I do this under the liberty of the press, and I am not to be accused for doing so. The pursuer says, I have maliciously attempted to deprive him of the glory of this discovery, and to injure his character, as a man of science, in the eyes of the world. He has made several very handy instruments to be sure; but am I to be told, that because I said that his combining of two principles in chemistry, which were well known before, was not an original inven-



tion, that such a statement is malicious? I deny that it is so, or that I am covering up and concealing from the world the merits of the pursuer, and giving that glory to another which is due to him alone; or that I have done any thing which entitles him to call for damages from me, merely because he combined what another did not. It is quite unreasonable to accuse me of malice for this. I stated to the public only what Dr. Brewster put into my head. The pursuer, Mr. Leslie, was not actually told by me that Dr. Brewster was the author of my statement of his having been guilty of plagiarism; and it is possible that the writer of the critique, when he mentioned Dr. Brewster's merit in pointing this out, may have been guilty of a similar offence with Mr. Leslie, when he showed his ignorance in asserting, probably on the information of another, that the language of the Hebrews was the rudest and poorest of all written languages. If I acted otherwise, I stated to the public only what I thought of this author and his discoveries: I have not acted contrary to the liberty of the press, nor am I to be accused of malice for doing what I conceive I had a right to do, and what I was legally entitled to do under the liberty of the press.

Gentlemen, in the next issue it is put, whether I have accused the pursuer "as being lying, dishonest, or joining with a bookseller to impose upon the public by dishonesty?" Gentlemen, these words are not to be found in the passage from my critique, quoted in the issues, which you will find runs in these terms, (p. 4.) "As I am on the subject, I may remark, that I was at first a little surprised to find that in the second edition of the *Philosophy of Arithmetic*, which was announced since I pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of ignorance. But on inspection of the work my wonder ceased; for I perceived that the new edition was nothing more than the old one, with a fresh lying title-page and a few additional leaves; in short, only a collusion between an honest bookseller and a doubly honest professor, to impose on the public, and get rid of the remaining copies of an unsaleable work. Here, then, is the vile offence against decency as committed by me. What reason have I to respect Mr. Leslie? His *Essay on Heat*! The matter of that work is no great affair, and the manner is so bad, that even a brother reviewer pronounces it to be execrable and 'drossy.' His *mathematics*! There is not an original

mathematical fact of the smallest value in all his book ; and his barbarous style and vile arrangement have done a great deal to obscure the merit of what he has purloined. I do not intend, for it would not be the proper place, to go into any detailed remarks on his geometry ; but every mathematician has laughed at his droll proof of the doctrine of parallel lines ; at his doctrine of ratios ; at his failure in proving his very first proposition, the foundation of his system ; and a thousand other such *betises*. Am I to bow to him because he is an Edinburgh Reviewer ? I question the inspiration of that worthy oracle. And as to the Professor's own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken Leslie the reviewer, to some enormous over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying ' Pretty poll, pretty poll,' to itself, ' Foul witch, foul witch,' to every passer by. Look *now*, I beseech you, at his article on the North-west Passage !!!

Gentlemen, you have heard evidence delivered on this subject. I gave my reasons for stating this, whether they were good or bad ; I stated them to the public ; and I used some familiarities with the author, as being guilty of a collusion with his bookseller, to impose upon the public by putting a new title-page to an old book, and adding a few additional leaves. This is all I did ; and I say, is not that true ? You have heard the statement of Mr. Miller, a bookseller, who has told you nothing but God's truth, that it was an imposition upon the public, though it did not impose upon the bookseller. They then call other booksellers, who tell you, that the pursuer and his bookseller put out, as a new edition of his book, the old copies, with a new title-page, and several additional leaves ; and that, for this they charged a higher price, though substantially and truly it was nothing more than the old copies of the book with a few notes. The public would have been imposed upon in this way if I had not put them on their guard. They never could have supposed any thing else than that the author had reprinted the book, and offered it to them as an improved and enlarged edition, when they saw it published in this way. It was not an improved edition ; there was a leaf torn off from the end of the book, and only eighteen pages of notes added ; an addition made to the multiplication table ; and another addition in the preface. The leaf



containing the former preface was torn out in order to add this passage: "In this edition I have introduced considerable improvements. The large multiplication table is now printed in a more convenient form, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made, consists in the table of quarter squares, near the end of the volume; which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves."

I ask whether the public would not believe from this preface that considerable improvements were made on the work? It does not tell all that was done to the book, there were only a few notes added at the end, and an addition to the multiplication table. The booksellers examined before you this day, are honest and fair men, and they have told you that they see nothing unfair or dishonest in all this. Gentlemen, it would seem that there are *tricks in all trades but ours*—we cannot impose upon you, at least in the Jury Court; we must here show you every thing fairly and openly. In all other professions *except* THE LAW, there are tricks in trade—take any other business you please—the "weavers," for example; you will probably recollect the Scotch song written by Burns—

"Willie Wastle dwalt on Twced,  
The place, they ca'd it Linkumoddie,  
Willie was a wabster gude,  
Cou'd stow'n a clew wi' ony body."

Gentlemen, you have heard it said, "a's fair i' the wabster trade," but yet Willie Wastle was a *thief*. You may also have heard of a clergyman in England preaching before the corporation of tailors, when he chose for his text, these words; "a remnant shall be saved." But would any man venture to say, that all tailors are *honest* men, if they adhere *literally* to that text. If he could, he may say the same of the booksellers. *He may say the same of my client*, Mr. BLACKWOOD. I certainly believe he is *no better than the rest*—they would all try to get off a book with a few notes, as a new edition, if the author were to desire them. I believe, however, that there is only one instance of an *author* lending himself to such a trick, and that was in the case of a lady, who certainly did not understand what she was about; but, Gentlemen, when booksellers take it upon them to say to the public that that is a new edition, which is merely the old copy of a forgotten work, with a new title-page, and a few notes, I tell them they treat me *dishonest*—



ly; and if a book, like this of the pursuer's, be republished with a few additional sheets of paper, and a multiplication table, and called a new edition enlarged and improved, I have no hesitation in saying, that there has been a dishonest collusion betwixt the author and the bookseller to impose upon the public. Mr. Leslie, the author before you, has *let himself down*, in my opinion, in lending himself to this trick, and there can be no justification given of his conduct in this Court. We have all done wrong things in the course of our lives, but nothing of this nature which any man would attempt to justify in a Court. Mr. Miller said that it was an imposition on the public, and that the thing should not be done. To pass off, as a new edition of a work, a few notes, with a new title-page prefixed to an old book which is not saleable, is a mere trick of trade. A *fish-wife* will demand from you 2s. 6d. for what she will the next moment take 9d.; but she belongs to a *privileged class*, of whose tricks and impositions the public are generally pretty well aware. In the present instance, the public could not have suspected any trick. The person making this statement did not mean to refer to the bookseller, but to the book; at same time, I am certain, that if Mr. Blackwood had noticed this remark in the article as to the honest bookseller, when he inserted it in his magazine, he would not have allowed it to go in; nothing, indeed, can justify what is not justifiable in itself, but other authors have been treated in the same way. Savage ridicules Curl, the bookseller, for this trick, in very severe satire; he says that Curl published a book with a new title page to every 500 copies, calling each set of copies a new edition, which Savage treats as a *bookselling trick*, and not to be justified.

I may mention also an attack upon Dr. Gregory—

**LORD CHIEF COMMISSIONER.**—I am sorry to interrupt you, Mr. Forsyth: the case you are now proceeding to state, is that of another who may have done a wrong; that can be no rule for the Court; stick to your own justification.

**MR. FORSYTH.**—In page fifth, there is another ground of attack on us. In the third issue, the question is put, whether we have not described the pursuer “as resembling a parrot.” Gentlemen, a parrot is a very beautiful bird; I should have taken such a comparison as a compli-

ment paid to me ; and I do not see why the pursuer should take it so much amiss. It is a prettier animal than either of us. This charge reminds me of the story of the poor Scotsman in London, who called the parrot a "green goose," because it abused his countrymen, by calling nick-names. Sir John Carr was likewise abused in a much worse style than this. It may be supposed, indeed, that I said the pursuer resembled a parrot,—that spoke things it did not understand,—when he called the *Hebrew* language the *Samaritan*.

CHIEF COMMISSIONER.—Mr. Forsyth, you are going wrong again. You are wandering from the libel, and injuring the cause of your client.

MR. FORSYTH.—Gentlemen, I shall read the passage about "Pretty Poll." On page 5th of the issues you will find these words: "Am I to bow to him because he is an Edinburgh Reviewer. I question the inspiration of that worthy oracle, and as to the Professor's own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken LESLIE the reviewer, to some enormous, over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying, 'Pretty poll! pretty poll!' to itself. 'Foul witch! Foul witch!' to every passer by. Look now, I beseech you, at his article on the North-west Passage!!!" With regard to that, Gentlemen, we have a counter issue. And I own I expected that the pursuer this day would have made an admission, or a denial, that what is here stated as to Mr. Leslie being a writer in the Review, was the fact. *The fact is not denied*, that Mr. Leslie wrote in the Edinburgh Review; and it is generally known that he was the principal contributor to it.—

CHIEF COMMISSIONER.—Mr. Forsyth, I must stop you again. The libel in question was understood to be a libel upon Mr. Leslie, as an author writing in the Edinburgh Review. Now, he is an *unavowed* author in this work, if he is a contributor to it. Now, in settling the issues, I thought it but just that you should state in the issues, the passages in the Review which you refer to, as having been written by Mr. Leslie, and that you should undertake to prove that he wrote them. And if, in support of your



statement, you should be able to bring forward evidence to satisfy the Jury that the Professor was the author of these passages in the Review, in which he criticises his own works, lauding himself, and running down other writers, then the picture of a bird, applied distinctly in the libel to Mr. Leslie, comes to be a question whether it is fair criticism or not. But you must *prove* to the Jury, that Mr. Leslie is the author of those passages which you so pointed out; and you are not entitled to *assume* an admission of the other party, that he is the author of those passages. Great allowances are to be made for a counsel pleading in defence of his client, but the Court cannot allow the counsel on either side to travel out of the issues.

MR. FORSYTH.—Gentlemen of the Jury, we do not consider this a serious matter by any means. It is a mere jest. You have heard how many such things were said against Sir John Carr and his works, that he was not only alluded to in words much worse than those, but even his person was exhibited in caricature.—

CHIEF COMMISSIONER.—There again you go wrong. The case of Sir John Carr was that of an *avowed* author. There were in that case *avowed* works also. The books criticised were *avowed* to be Sir John's; and, therefore, the judge was of opinion that the attack made upon those works was fair criticism, and not a libel.

MR. FORSYTH.—Gentlemen, I must now state to you, that there is no help for difference of opinion. Authors and lawyers will differ in opinion, and there is no help for it. I have called this a jest: it is a sorry jest; and *if I had been dealt fairly by*, I could have proved the statements I made.

MR. JEFFREY.—My Lord, I can't bear this. I distinctly call upon Mr. Forsyth to show *how*, and in *what manner*, he has been *unfairly dealt by*. I deny that he has been unfairly dealt by, *by us*; all his witnesses are now inclosed, and he may proceed to prove his statements by them, if he pleases.

CHIEF COMMISSIONER.—Mr. Forsyth, I have felt it my duty, sitting here, to state that you had gone out of the



record. All that the Court requests is, that you confine yourself to the case of your client. The Court has no desire to do you the least injustice.

Mr. FORSYTH.—I admit that, my Lord.

Now, gentlemen, I *have* made this remark about “Pretty Poll,” in reference to the pursuer Mr. Leslie. It is a sorry jest, and I do not think it worth while to go to evidence about the matter. *It is a mere joke*, and we consider it to be so. If the liberty of the press be of any value at all in this country, my having used this squib can be of no bad consequence to the defender. If I have said this of the pursuer, Mr. Leslie, that respectable person cannot qualify any injury that he has sustained by it. And but for this issue, “Pretty Poll” would have been long ago forgot. It is *a mere jest*, and is only of importance as having been brought forward here.

*Lastly*,—As to the attack upon the University of Edinburgh, that charge will be found on page 6th of the issues. “With grief I have perceived that many of the young men who go from this country to Edinburgh, to pursue their medical studies, come back with their religious principles perverted, and their reverence for holy things sneered away. It would be very unjust to accuse any *individual* of this weighty charge, but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to show that the lights of the famous Northern Sect are not infallible; that under affected knowledge, gross ignorance may lurk; and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice, also, but much more sincerely, to learn that a better spirit is arising in your famous university; and, in spite of its levity, its humours, its follies, nay, even its transgressions, I think your Magazine has been instrumental in this good work.”

“Whether the whole, or any part of the said words are of and concerning the pursuer; and falsely, maliciously, and injuriously hold out and represent the pursuer as being one of the public teachers, by whom young men, who come as students to the university of Edinburgh, have their religious principles perverted, and their reverence for holy things sneered away, to the injury and damage of the said pursuer?”

Now, in the first place, in my humble apprehension,

the university of Edinburgh is as liable to criticism as the government of a state is; and, so far as it is injured, it may take measures to obtain redress. The pursuer is not entitled to come forward and call upon you to redress such wrongs. The persons noticed in the critique here, are young men coming from Ireland to study medicine,—not natural philosophy; which is not one of the medical classes. The chemistry class is, but Professor Leslie is not the professor of chemistry. To be sure, he comes in for his share of the animadversion upon the university, as one of the professors. Is not a man entitled to go from one climate or kingdom to another to study in the universities. It is well known that in this university, there are students from all parts of the world; and if I, a native of another country, should come to the university of Edinburgh, and go through a course of study, would I not be entitled to say, upon my return home, *if it were the case*, that the students of medicine who come to this university have their religious principles perverted, and their reverence for holy things sneered away. Gentlemen, the writer of this article comes from Ireland: he dates his letter from Dublin, and nothing is said against its being a genuine letter. But whatever the writer of that letter means, it is clear he did not refer to the literary classes *generally*, but to the medical students; and, therefore, it cannot be true that he refers to Professor Leslie, as he is not one of the medical professors. Observe what he says: “It would be unjust to accuse any *individual* of this weighty charge; but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to show that the lights of the famous Northern Sect are not infallible: That under affected knowledge gross ignorance may lurk, and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality.” *Any individual!* What individual? *Any individual professor of the medical classes*, to be sure, and not you, Mr. Leslie. To be sure, the writer says, “Under affected knowledge, gross ignorance may lurk.” I think gross ignorance did lurk under the pursuer’s affected knowledge of the Hebrew language, and to that extent certainly, the passage may be applicable to Mr. Leslie. Then the writer goes on to say, “I rejoice also, but much more sincerely, to learn that a better spirit is arising in your famous university.” *When* did this better spirit arise? About the time that Professor



Leslie was made Professor of Natural Philosophy; therefore, the writer could not have accused Mr. Leslie of intolerance. Young men do not usually attend those classes of the University which they are not obliged to attend, to prepare them for their future pursuits; and this writer rejoices that a better spirit is arising in this famous University, at the time that Professor Leslie was made Professor of Natural Philosophy; therefore, he could have had no malice against him. I do not think it necessary to go into evidence, but I am happy to learn that the times of prejudice, ignorance, and intolerance, are now gone by.

Gentlemen, where does this case begin, and where does it end. Seriously speaking, it is just here—the pursuer, Mr. Leslie, published a book on arithmetic, in which he goes out of his way to attack the language of our holy religion;—my client stands up in its defence; and, *for doing this*, he stands before you this day. All the rest of the charges are trifling.

The defender declining to adduce any witnesses, the Chief Commissioner addressed the Jury as follows:

CHIEF COMMISSIONER.—Gentlemen of the Jury, it is now my duty to give you such views of this case as may direct you in forming your judgment on the different matters embraced in the issues; and, in doing this, I shall endeavour to lay down and explain the whole to you, in such a manner as, I trust, may be intelligible to you, and in connexion with the libel.

There is what is called a justification on proof of the *veritas convinctii*, that is,—where a justification of the libel is offered to be proved.

I shall make this plain to you immediately, and I shall take up the issues in justification of the libel first, leaving the others to the last.

The first justification offered will be found on page 7th of the issues, in these words, “Whether the pursuer held himself forth as the author of certain discoveries in regard to freezing or artificial congelation by means of evaporation under an exhausted receiver; he, the pursuer, knowing or being aware that the same or similar discoveries were previously pointed out, or described, in a paper in the 67th volume of the Philosophical Transactions of the Royal Society of London, entitled, ‘An account of some experiments made with an air-pump, on Mr. Smeaton’s principle;’



together with some experiments with a common air-pump?"

This is a justification of that part of the libel which you will find on the 4th page of the issues, of which I need not read to you more than a part. It regards what is said about the former productions of this author, Mr. Leslie, which it seems to have been the wish of the critic to take up and criticise. He says, "Why don't you review his *Phoenix Park, Killarney, &c.*? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie's monstrous plagiarism of the theory of heat, from an old volume of the *Philosophical Transactions*?—For shame!"

What the pursuer, Mr. Leslie, complains of in this article is, that he, holding himself out to the Institute of France—to the Royal Society of London,—in this city and elsewhere, as the author of this discovery, is said, in this article, to have been guilty of a "monstrous plagiarism;" and the author of this critique asks Mr. Blackwood, the defender, "why don't you, the editor of the *Magazine*, bring forward and review his other works, which are deserving of criticism." Now, the defender says, that *this is true*; and he offers to prove his avowment, that it is a plagiarism; and yet he deserts the grounds of it on the trial. The question then is—not if the other party has proved the libel, but whether the libel be false? Now, if they don't prove a justification, the charge is true, and the libel is false; the justification has been abandoned by the defender, and this saves the Court, and you, Gentlemen, farther trouble. The case stands thus,—The defence put in, that this is a fair criticism on the pursuer's works, is at an end, and the libel is at an end, and is held to be false; and this question, therefore, upon the issues, stands in favour of the pursuer. It is satisfactory also to find, that this point is established by the proof led on the part of the pursuer, as detailed in the evidence given by Dr. Thomson, Dr. Marcet, and Dr. Dewar. I shall confine myself to Dr. Marcet's testimony, for all these gentlemen have sworn that they believed at the time this discovery to have been an original invention, and that they still think so. They stated to you what they found in the *Philosophical Transactions* of that period, that the qualities of the bodies mentioned were known to have

existed before,—but that the invention of the pursuer consisted, not in the discovery of these qualities, which were previously known, but in their *combination*. Dr. Marcet particularly states, that a man of a very powerful genius might have entertained such an idea, and might have got to Mr. Leslie's discovery. Mr. Leslie, by meditating on the result of Mr. Nairne's experiments, might have drawn from it the discovery he made; but, if he did, he would have given the greatest proof both of an inductive and inventive genius. He has told you, that the principles and properties of the substances on which this discovery was founded, were known more than sixty years ago by Dr. Cullen, and more than forty years ago by Dr. Blair, and, generally, by the whole philosophic world; but he has said that Mr. Leslie's great inductive genius has accomplished what the whole united science of the age had not done. The pursuer has not left this issue to stand upon an inference of the law merely, but he has placed it besides on sure and solid grounds, by proving the facts. Both the members of the Institute of France, and the members of the Royal Society of London, have published, in their Transactions, the same account of Mr. Leslie's discovery, and have concurred in the opinion of its being original. We have nothing to do with the importance of the discovery, but that the pursuer is proved to be the original inventor. Yet he is called by the defender in this libel a "plagiarist," and the offer made by him to prove that charge is abandoned, while the original invention is clearly proved to have been Mr. Leslie's.

The second justification put in issue, is, that the pursuer is the editor of a book, entitled the "Philosophy of Arithmetic." This issue itself I shall now read to you: "It being admitted, that a book, entitled the Philosophy of Arithmetic, was published by the pursuer in the year 1820, and is described in the title page as a second edition, improved and enlarged, meaning thereby that the said book, described as a second edition, was enlarged and improved in comparison with the first edition of the said book;—Whether the pursuer, with the bookseller, in holding out to the public, the book first aforesaid, as a second edition enlarged and improved, was guilty of a dishonest attempt to impose upon the public."

Now, here is a justification also. The question, on the part of the defender, rests entirely on argument. There is no evidence brought forward of any dishonest attempt,



on the part of the pursuer, to impose upon the public; but the defender's counsel have left it to stand on the appearance of things. Now, see the way in which the pursuer is attacked in the libel, which you will find by referring to the top of the fifth page of the issues, in these words, "But, on an inspection of the work, my wonder ceased; for I perceived that the new edition was nothing more than the old one, with a few additional leaves; in short, only a collusion between an honest bookseller, and a doubly honest Professor, to impose on the public, and get rid of the remaining copies of an unsaleable work. Here, then, is the vile offence against decency, as committed by me."

Now, on this libel arise two inferences, on the expression "honest bookseller, and doubly honest Professor;" and the question is, is it used in a literal sense, or ironically? The question is given up in the issue in justification, where it is stated that by the word "honest," here used, was meant "dishonest;" but the interpretation of it depends entirely on sound common sense, applied to the scope and meaning of the passage, and you will apply it in a proper and legal way.

*First*, You will consider whether the expression means "*honest*" or "*dishonest*." If it would be absurd to consider the passage in its literal sense, it is your province to draw the proper conclusion. To me it seems absurd to say that when a man is directly accused of putting a *lying* title page to a book, he could be considered as being called an *honest* man.

As to the first page of this book being "a lying title page," you have the evidence of Mr. Tait himself, who was the publisher of it, and of the other booksellers, Mr. Cadell, Mr. Miller, and Mr. Aitken. I throw Mr. Tait's evidence out of the question, because he is the person accused of this dishonest attempt to impose on the public. All the others have stated distinctly, that this copy of the book should be called "second edition." Mr. Miller has given you an instance of this being done with Mrs. Hamilton's works, and Mr. Aitken has done the same as to Ross's works; both of them were called "second edition revised." The book in my hands is called "second edition improved and enlarged." On asking them if there were any particular things which entitled it to be so called—if there were improvements and enlargements made upon it, they have



all said, that there were such as entitled the book to be called by this title. Now, although there may be an inaccuracy in this, (and here, you find it called in the libel a lying title page,)—where are you to go to ascertain in the only way that can be satisfactory to you, whether it be so or not. You can only go to those who are engaged in the trade. The thing stands thus: this was a copy of a book formerly published, newly edited; but then it was so edited, with such additions and improvements, as to satisfy the mind that this cannot be said to be a lying title-page, when it states that the book was ‘improved and enlarged.’ I leave this question with you, telling you, not merely that nothing has been proved against the correctness of this title-page, but that no attempt at proof of the justification in the issues has been made, so that this must be held as not being a lying title-page, but a proper title; and if the charge of honesty is considered by you as meaning dishonesty, then the justification upon this issue has failed altogether; and your verdict must be for the pursuer.

The next issue is, as to the pursuer’s ‘being a parrot.’ This refers to articles in the *Edinburgh Review* said to be written by Mr. Leslie. You will find the paragraph to which this issue refers on the 5th page, in these words, “Am I to bow to him because he is an *Edinburgh Reviewer*? I question the inspiration of that worthy oracle.” “And as to the Professor’s own part in its lucubrations.” (This fixes down the reviewer here meant, to be the Professor, whose name is given in what follows :) “Why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken ‘*LESLIE*,’ the reviewer, to some enormous over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying ‘Pretty poll, pretty poll,’ to itself, ‘Foul witch, foul witch,’ to every passer by. Look now, I beseech you, at his article on the North-west Passage!!!”

Gentlemen, I have had already occasion to explain the way in which this is done. If a person, without cause, is represented ridiculously, either by a picture or otherwise, there are good grounds of action for libel. As little doubt can be entertained of *this*. If the alleged libel is a fair criticism upon the work of another, however severe, as Lord Ellenborough says, even if the person criticised is represented ludicrously in a picture, if that representation relates to his works, and is published in a criticism upon his works,

it is to be favourably dealt with. But if, without reference to the works, one person puts forth to the public such a ludicrous representation of another, then the libel is considered in law to be malicious and unfounded, and there are good grounds of action.

Now this is the rule of law as to criticism on works. If an author publishes his works to the world, and puts his name to them, it is unnecessary to prove them to be his; they prove themselves; they are not like loose works in a review, or other periodical publication, the writer in which is usually desirous of remaining unknown. But even as to these, if it can be brought home to him that he is the author of the criticisms considered libellous, then the libel contained in it is established to be his; and if it appears, that in such a critique there is contained an assertion, that the author of the works criticised has, in a similar periodical publication, lauded and praised himself in reviewing his own works, while he treats those of other people scornfully, then the defender would be justified in putting in a defence, such as is contained in this counter issue. "Whether the defender, in stating that he had often likened the pursuer to a parrot, meant and intended to allude to and characterize, and did allude to and characterize, the pursuer, solely as the author of the said passages." But there is no such evidence laid before you. The pursuer, Mr. Leslie, stands therefore disconnected entirely with the review; and it is not necessary to inquire whether he was the author referred to in the issues or not; the defender has abandoned his proof in this issue, and has abandoned his justification; and therefore, on this issue you can only come to one conclusion, and that conclusion is in favour of the pursuer. The law admits of nothing else, and besides, the facts in this case, as proved by the pursuer, coincide with the law; and make assurance doubly sure.

I have gone into these issues at greater length than may seem to have been necessary; but the remaining parts of the case are of the deepest importance, and therefore I beg your attention to them.

This may be said to consist of matter which is critical, consisting of four branches:—*1st*, Of matter where it is *doubtful* to what class it belongs; *2d*, To matter where it is difficult to draw the line where libel begins, and where it ends; *3d*, Where the defender has abandoned all notions

of fair criticism, and has descended to personal abuse; and 4th, What is fair and manly criticism, and under the protection of law. These questions have already occupied a great part of the time of the Court in this case, in its previous stages. In a case also where Leitch and others were defenders, and the schoolmaster of Bathgate pursuer, the Court paid much attention to this matter. I need not refer to authorities in the English Courts; the law on this point may be stated in one sentence. No judge was ever clearer in his views of it than my Lord Ellenborough; and none was ever more anxious to preserve the rights of free and fair criticism by means of the press. He states distinctly, that fair criticism, however severe and sarcastic, although the critic should be mistaken in point of fact in many things, if the criticism be upon a published work, the jury must take it as within the bounds of fair criticism. The law is clear on this point in both ends of the island. Libel or no libel, is a question of law, and the jury take their directions in that respect from the Court. When the question arises on the import of words, it is left to the jury to decide upon the facts, and the plain and obvious meaning of the words. Having stated this, I am under the necessity of reading to you the words of the issue. They will be found on page 4th, in the following terms:—

“ Mr. Editor, In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language, in his *Philosophy of Arithmetic*, though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is ignorant even of the alphabet of the language on which he thus presumed to offer an animadversion. The professional *dictum* alluded to, is this: The Oriental nations appear generally to have represented the numbers as far as one thousand, by dividing their alphabet into three distinct classes; but the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100.”

Gentlemen, you have had very sensible and able evidence laid before you this day, on this point: first, You had that of the Rev. Mr. David Dickson; and secondly,



of the Rev. Dr. David Scott. These reverend and learned gentlemen made this matter perfectly intelligible. There are *two* kinds of Hebrew character, the Samaritan or Phenician, and the Chaldaic. The Samaritan or Phenician alphabet contains twenty-two letters, and the Chaldaic, in addition to the twenty-two original letters, added five final letters. Now, Gentlemen, you will observe, that the pursuer, Mr. Leslie, in his book on the Philosophy of Arithmetic, is pursuing the chronological deduction of the mode of notation among all nations; and, in the course of his work, he makes this commentary upon the Hebrew language. Now, in pursuing this course of inquiry, what did he naturally look to? He looked to that language which was first in the order of time; he looked to the *Sumaritan*, or ancient Hebrew, and he found that the Samaritan alphabet contained only twenty-two letters. So far as this goes, the statement in his work was correct; but then, he added these words which lay the foundation of this libel, and all that is built upon it. "The Hebrew language, the rudest and poorest of all the written languages, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100."

Now, Gentlemen, the evidence does not go to establish this to have been the case. The meaning of the words used is, that the Hebrew language is *rude* and *poor*. Taken without reference to the meaning and object of the publication in which it stands, is it to be considered as a rude and poor language in general? Mr. Dickson and Dr. Scott say that it is not, but that it is, in a high degree, a philosophical language; and therefore, when Mr. Leslie said what he stated in this note, he was giving good and solid grounds of criticism; and it is for you, Gentlemen, to judge where the author of this stricture deviates from the rules of fair criticism. And here I shall only say, of the style of this writer's critique, that it is very severe; it contains nothing classical; and, if it be not protected by the favour of law to bold criticism of a published work, it is conceived in a style of language approaching as near to malice as any thing of this kind I ever read. Yet, Gentlemen, if you are of opinion that the writer of this article is only exercising an undoubted right, and is here performing the office of a

protector of letters,—however strong the language he uses may be, you will take it as a free and fair criticism. If you check such strictures in one case, others will be deterred from undertaking such an office, which has been the great instrument, through the medium of a free press, of our acquiring that accuracy of language—that taste for poetry—that regard for truth and purity of manners, which have brought this favoured country to the highest pitch of elegance and refinement.

The critique then goes on, “The rudest and poorest of all written languages? By my troth, Mr. John Leslie, these be bitter words; but the latter part of the sentence, by displaying the utter ignorance of the Professor, happily renders the railing of the former perfectly innocent. Indeed, so much ignorance and impertinence combined, will hardly be found in so short a compass in the works of any other writer of the smallest literary character. The merest smatterer in Hebrew—any one who had read the first page of the grammar, could have informed Mr. Leslie that the Hebrews had *not* recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear that the Professor was totally unacquainted with the letters of the language he was criticising, or he would have known that the five finals, (technically called *Camnephatz*,) are used to express the five last hundreds; and, therefore, that the glory of inventing the expedient which he describes with such imposing minuteness of detail, is due entirely to himself. So much for his qualifications to decide on the merits of the Hebrew.”

Now the evidence given as to the Samaritan language, which appears to have been the ancient Hebrew referred to by the pursuer, goes to this,—that it did not contain the five final letters found in the Chaldaic character; yet, I cannot tell you that this passage is not within the limits of fair criticism; and, in the other end of the island, a Judge would have no hesitation in directing a non-suit. The libel goes on, “But it appears to me that he has a particular pique against the language; that his censure arises as much from spleen as ignorance; for the Roman method of notation is still more clumsy than his fancied Hebrew System.” “They may be Arabic also; but to enter into the controversy respecting the superiority of Hebrew and Arabic for the edification of Professor Leslie, would be as profitable

as to set about demonstrating the seventeenth proposition of Euclid's twelfth book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere ! We must look, therefore, for some other reason ; and perhaps we may find it in the unhappy circumstance in which Hebrew is placed,—it is the language of the Old Testament. The language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume's, would say, dedicated to superstition ; and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect, *per fas et nefas*. But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not good generalship to entrust even the details of a siege to a blundering gunner or a rash volunteer ; and I must consider the Professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects to be entitled to sneer at the credulity of Luther, the Dreams of the Christian Fathers, and the fancies of St. John." "He may believe when I tell him, that in the eyes of those who know any thing on the subject, he makes as awkward a figure as the most deficient digit he ever 'caused modify.' He may also assure himself that the rule *ne sutor ultra crepidam*, is truly a golden one. He is perhaps a mighty respectable third or fourth rate mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself ; but when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of critics and scholars, nothing can be more pitiful. And yet, (p. 232,) he blames Joseph Scaliger, (whose name as a man of learning is *rather* higher than Mr. Leslie's as a mathematician,) for quitting his usual studies to meddle with mathematics. So easy it is to perceive the presumptive dogmatism of another, and to overlook our own." And then the issue concludes thus : "Whether the whole or any part of said words, are of and concerning the pursuer ; and whether the pursuer is therein falsely, maliciously, and injuriously represented, and held up to ridicule and contempt, as ignorant of the Hebrew language, and even of the Hebrew alphabet, or as being guilty of impertinence, or of disliking the Hebrew language, merely because it is the language of the Old Testament, and to be attacked *per fas et nefas*, or as being an *enfant perdu*, to



the injury and damage of the said pursuer." Then it goes on to say, (a little past the middle of the fourth page : "In a work of his, treating on arithmetic, that 'celebrated' man thought proper to go out of his way to revile in a most dogmatic and insulting manner, the Hebrew language. I asserted that he did not know even a letter of the tongue he had the impudence to pretend to criticise, and I proved my assertion. I leave the decision of the question to any Hebraist,—to any man of common sense in the land." All this may be said to be fair criticism, but then he goes on : "I *proved* that he was actuated by a hostility to the language of Revelation, simply because it was so, and I defy any one to refute me."

Now, combining this passage, with a passage in the first issue, it appears to me that this was dictated by spleen against the man, and that the criticism arose as much from that cause, as from a desire to exercise the rights of fair criticism and discussion. He there says,—“We must look, therefore, for some other reason, and perhaps we may find it in the unhappy circumstances in which the Hebrew is placed; it is the language of the Old Testament. The language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume's, would say, dedicated to superstition, and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*.” And “I *proved* that he was actuated by a hostility to the language of revelation, simply because it was so, and I defy any one to refute me.” Now, that the writer of the libel *asserted* all this, is true; but, that he *proved it to be true*, remains yet to be seen. It remains to be proved that the pursuer was hostile to the Hebrew language, *merely because it was the language of the Old Testament*, and that he *sneered* at the credulity of Luther, the dreams of the Christian fathers, and the fancies of St. John.

Here the libel begins; and here the line of demarcation is perfectly clear; and it is impossible to say that this part of the libel is correct in any point of view, unless this statement be made out by evidence. Is there any thing in evidence that goes to show, that the pursuer was actuated by the motives here stated, at the time he wrote his book, especially if the object for which he wrote,—the tracing of the progress of notation, be taken into consideration? I think not. Nay more, if the defender could have proved

*in general*, that the author of that book upon arithmetic was a *professed infidel*, as were Lord Bolingbroke and Voltaire, this libel might be considered as fair criticism, but otherwise it must be considered as a libel, because it attributes motives to the pursuer, which the author of this criticism was not entitled to do. Now, Mr. Leslie has published no work in which it is alleged, far less proved to you, that he has undervalued and sneered at the religion of Christianity, or any thing of that kind. It might have been fair criticism, if, in the infidel works of Bolingbroke or Voltaire, there had been found such a passage, but it cannot be considered so here.

I now call your attention, Gentlemen, to another passage. You have seen from the evidence, that Mr. Leslie held the Greek language in high estimation. Improper motives have been ascribed to him; he has been accused of undervaluing the Hebrew language, because it is the language of revelation. Now, was a person holding such an opinion of the Hebrew language likely to have expressed himself as the pursuer has done in regard to the Greek language? The Greek language, it has been shown to you, is the language of revelation, above all others. It is in it that all the revealed religion of the gospel is written. It is not in the Hebrew language that the prophecies and the books of Moses are put into the hands of the youth of our universities, but in the Greek, which the pursuer so highly eulogizes; and how Mr. Leslie, had he been a scoffer at religion, could have drawn such conclusions from the Hebrew language as he has done, in the note upon his book, if he had intended to refer to the *Greek*, or what is *now* the language of the Hebrew Scriptures, I own I cannot understand. It is now left to you to draw your own conclusions, whether or not the pursuer was likely to have made such an observation as he has done, from a dislike at the language of revelation, merely because it was so.

Now, there is another passage, which I request you will attend to, at page 227 of the body of the work on arithmetic, published by the pursuer. On this part of the case, I must again refer you to part of the defender's publication as stated in the issues. The terms of the libel are—"I must consider the professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects to be entitled to sneer at the credulity of Luther,

the dreams of the Christian fathers, and the fancies of St. John." This refers to the historical note to be found in the pursuer's book, to which I have referred, and in which he mentions the probable views of Pythagoras, in the introduction of the mystical numbers of the east, and then, after describing the properties of those numbers, he goes on thus, at page 229.—“ But it would be endless to recount all the visions of the Pythagorean school; nor should we stop to notice such fancies, if, by a perpetual descent, the dreams of ancient philosophers had not, in the actual state of society, still tintured our language, and mingled themselves with the various institutions of civil life. The mystical properties of numbers, originally nursed in the sombre imaginations of the Egyptians, were eagerly embraced by the Jewish Cabalistic writers, and afterwards implicitly adopted by the fathers of the Christian church. But those fancies maintained an ascendancy in public belief, until a very late period, nor were the reformers themselves exempt from their influence.”

Now, who were the fathers of the Christian church? They were men like ourselves;—they were not inspired persons, nor were they persons whose doctrines were not to be impugned, and perhaps the impugning of their doctrines was the ground of the reformation which took place in our Protestant church. Then the passage goes on: “ Luther, whose vigorous mind was yet deeply tintured with the credulity of his age, was accustomed to venerate certain numbers with a species of idolatry. Peter Bungus, Canon of Bergamot, published, in 1585, a thick quarto, *De Mysticis Numerorum significationibus*, chiefly with a view to explain some passages in the Old and New Testament. But it was from Calvin, not Luther, that the faith of the church in this country was derived.

Then he refers to the “ mark of the beast,” and I call your attention to this last passage. “ The famous number of the Beast, 666, which has so often tortured the ingenuity of the expounders of the Apocalypse, is regarded by some divines as of Egyptian descent, the archetype of the three monads, and combining the genial and siderial powers, being, indeed, only the sum of all the terms of the magic square of 6, the first of the perfect numbers, and dedicated to the sun. But we still see the predilection for Luther's favourite number, *seven*, strongly marked in the customary



term of apprenticeships, in the period required for obtaining academical degrees, and in the legal age of majority."

The "Apocalypse" is the only word to be found in this passage. Its meaning signifies the "Revelation," viz. of St. John; and if his remark contained a reflection of an irreligious cast, it would be the foundation of an action for libel. He is said to be accused of sneering at the dreams of the Christian Fathers—Who were the fathers of the Christian church? They were divines,—the same as the reverend and learned gentlemen whom you saw here to-day,—whose especial duty it was to expound and criticise, in their writings, the language and doctrines of the whole of the divine oracles, and not that of the Apocalypse merely. The defender should have taken an issue in justification on this part of the case, and have shown you here, that the language of the Hebrews, which the pursuer attacked, was the language of the "Revelations,"—the Greek, which the pursuer had treated scoffingly; but he has not done so.

I have thus gone through the whole case. I have also looked into Mr. Leslie's book, part of which I confess I do not understand. There is one passage, however, to which I would call your attention: Alluding to the mode of computation by hundreds among the Greeks, the pursuer, in his book, at page 223, quotes four lines from Juvenal, describing the mode in which the aged Nestor counted hundreds upon his *right* hand\*; and he quotes also several expressions from Cicero. And then, at page 224, he says, "Some commentators would even explain from the same practice of numeration, the allegorical description of wisdom in the Proverbs of Solomon: 'Length of days is in her right hand, and in her left hand riches and honour.' Prov. iii. 16." Now this quotation appears to me to be in a spirit and character which gives a direct contradiction to the assertion that there is any thing in this work reflecting on the language of revelation. If Professor Leslie never did so,—and we must take it for granted that he never did, because we have no proof to the contrary;—the

\* Rex Pylus (magno si quicquam credis Homero)  
Exemplum vitæ fuit a cornice secundæ.  
Felix nimirum, qui tot per secula mortem  
Distulit, atque suos jam *dextra* computat annos.

Juv. Sat. x. 246.

charge in the libel, that this passage, which has been so much commented upon, was put down in his book, because he had a spite at the language of revelation, must be set down as not true. I told the counsel, when the case was before me in adjusting the issues, that I would deliver such an opinion upon the law of the case, when the issues came to be tried, if no such proof was led; and if that opinion should be considered by the counsel to be erroneous, they could take a bill of exceptions to your verdict on the ground of misdirection in point of law: and I now state the same thing over again, that there may be no mistake; and that the Court is of opinion, that the *first* part of this stricture upon the pursuer, is matter of *fair criticism*, and within the bounds of free discussion of a published work;—but that the *last* part of it is a *libel*.

This is not all. I should lay down the law to you also, as to authors and publishers of printed works. If a publisher gives up the name of the author of a printed libel, when he is called upon to do so, that puts an end to the presumption of malice on the part of the publisher, and leaves it to the person libelled, to find out the author of the libel;—but, if the publisher does not give up the author, then the publication is the vehicle of conveying and circulating, through the minds of the public, the venom in the libel; and the law says, in that case, that the publisher is the author. And here again, the party may take a bill of exceptions against this part of the charge, on the ground of misdirection in point of law, if he pleases.

Here, again, the defender has abandoned his plea in justification. The question is put to you in the issue, on page 7, as to the libel containing no attack whatever on the pursuer, as a man or as a professor, in these terms: “Whether the whole, or any part of the said words, are of and concerning the pursuer; and falsely, maliciously, and injuriously hold out and represent the pursuer as being one of the public teachers, by whom young men, who come as students to the University of Edinburgh, have their religious principles perverted, and their reverence for holy things sneered away, to the injury and damage of the said pursuer?”

On this point, the words I refer to will be found at the bottom of the fourth page of the issues. The words complained of by the pursuer are contained in the *four* numbers of the Magazine specified in the summons; and it is of

importance for you to observe, that the whole of the paragraphs in these *four* numbers of that periodical work, are repeated in one article on the 208th page of the 44th Number of the Magazine; and on the article in this Number, therefore, I shall make my observations. You there see, at the commencement of the paragraph in which the subject of the libel is introduced, that the writer of it speaks of his correspondence with the editor, and of his satirical strictures on the pursuer. These are contained in a series of essays on Mr Leslie's publications, which may be compared in their manner, though the matter of them be different, to Addison's Essays on "Milton's Paradise Lost." They are scattered throughout the pages of different numbers of the Magazine but, in the eye of law and of reason, they are one and the same work. They attack Mr Leslie's publications, from the commencement of his original works. It is of importance that you remark the paragraph which begins at the last line of the left hand column of page 209. of the 44th Number of the Magazine, which I now hold in my hand. It begins thus—"With grief I have perceived"—but before I read that paragraph to you, I would call your attention to what he says in the one that goes immediately before it, which is in these terms—"What other claims to respect he possesses I know not, except his having made some neat second rate chemical experiments, and invented some handy little instruments; but even if his claims were ten times as weighty, they should not have deterred me from speaking as I thought. A man who could go out of his path, in an inquiry on the nature of heat, to recommend an impious work, and, in a treatise on arithmetic, to cast an ignorant sarcasm on the language of the Bible, or to sneer at the 'fancies' of one of the apostles, must ever be an object of suspicion to those who hold the Scriptures in honour, and impiety in detestation. We have no assurance that he may not digress as culpably hereafter; and if he does so, it is only fair to give him warning, that I shall take care to point it out."

"With grief I have perceived," (this, you will observe, gentlemen, is the commencement of a new paragraph, and it is of importance to notice that it immediately follows the other I have now read,) "that many of the young men who go from this country to Edinburgh to pursue their medical studies, come back with their religious principles perverted, and their reverence for holy things sneered away.



It would be very unjust to accuse any *individual* of this weighty charge,—but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to show that the lights of the famous Northern Sect are not infallible; that under affected knowledge gross ignorance may lurk; and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice also, but much more sincerely, to learn, that a better spirit is arising in your famous university; and, in spite of its levity, its humour, its follies, nay even its transgressions, I think your magazine has been instrumental in this good work.”

Now, Gentlemen, you will observe that, in the preceding paragraph, the pursuer is attacked as *sneering* at the “fancies” of one of the *apostles*, and is held out as *an object of suspicion* to those who “hold the Scriptures in honour, and impiety in detestation;” and then this paragraph—in which the charge is contained, of the religious principles of the students being perverted, and their reverence for holy things *sneered* away,—follows immediately afterwards, and in connexion with the other, and in this it is said—“It would be very unjust to accuse any ‘*individual*’ of this weighty charge,”—the word “*individual*,” you will remark, is printed in italics,—“but the fact is undeniable.”

Gentlemen, it was an admirable rule of my Lord Mansfield’s, and, after him,—I thought it *my* duty to take down his words as they were spoken at the time, and I think I can give them to you from memory,—Mr. Justice Buller, a very eminent judge, laid down the rule of law in the same terms:—That great lawyer said, “I always observe it as a rule to charge a jury to consider a libel in the same way as a man of common sense and understanding would do, and never to deviate into nice distinctions about the meaning of words, but to be guided in their judgment by good sound sense.” THAT I NOW SAY TO YOU. But there is another *dictum* of my Lord Kenyon’s, which I must also state to you, and it is equally short—That expressions used in writings are to be judged of by their context; “*noscitur a sociis*.” The *matter* of the paragraphs I have now read to you is respecting the *impiety* of the person who is thus charged in the libel; and on this point I call your attention to the statement in the defence, where it is said,—“If the passages had been set forth, it would appear that there is no attack whatever on the learned pursuer, as a *man*, or

as a *professor*. 'The remarks of which he complains are directed against him in his character of an *author*, and are all confined to observations suggested by his publications.'

Gentlemen of the Jury, it is for you to judge of this. It has been stated to you from the bar, on behalf of the defender, that it is the COLLEGE OF EDINBURGH only that is attacked, and if its learned Professors think this a libel, the *College should take it up*. If this be a libel upon the College, it is a very grave one. If it be on the College, I do not choose to enlarge upon it. The pursuer, Professor Leslie, does not take it up as such; but the libel itself does say, that "many of the young men who go from this country (Ireland) to Edinburgh, to pursue their medical studies, come back *with their religious principles perverted, and their reverence for holy things 'SNEER-ED' away*"—and when it also says, that "it would be very unjust to accuse any '*individual*' of this weighty charge—but the fact is undeniable;" it is for you, Gentlemen, to decide, whether the pursuer, Mr. Leslie, is the "*individual*" here alluded to or not. You will take all the circumstances together; you will recollect that "*sneering*" is the word used where the libel charges the pursuer with having stepped out of his way to "cast an ignorant sarcasm on the language of the Bible, or to *sneer* at the '*fancies*' of one of the Apostles;" and here the same word "*sneered*" is connected with the students at this college, whose religious principles are said to be perverted, and their reverence for holy things *sneered* away; and it again, is also connected with the word "*individual*," who is accused of this mighty charge. There is a kind of apostrophe, or break in the sentence; and then comes the word "*honest*" in another part of the libel, clearly meaning "*dishonest*," which is directly applied to the pursuer *as a Professor*. Gentlemen, taking all these circumstances together, it is for you to say, could the word "*individual*" have been introduced into this libel by the writer of it, if no individual Professor was meant; or, is it introduced into the libel, with *reference* to some individual Professor, and by a particular mark. And, if you come to the latter conclusion, whom does it mean? Which of the Professors of Physic, or Moral Science, is it that is here alluded to? If you are of opinion that this has been said of a particular individual, and of Professor Leslie as that individual, then it follows that you will find a verdict for the pursuer on this issue. But if you find that this word "*individual*" was an *useless*

word, and introduced into the libel without meaning any one, at least, that it did not mean the pursuer, then you will find on this issue that this is not a libel on the pursuer, and you will find a verdict for the defender. You can apply your own common sense and sound understandings to this matter, as effectually, perhaps more effectually, than persons of greater learning and more scientific minds can possibly do.

Gentlemen, I have now done, except as to the damages, and on that point I shall be brief. As to the *three first* issues, the Court is of opinion, that they are legally made out in *favour of the pursuer*; but as to the *first* issue, there is a *part* of that issue about the pursuer's having a *pique against the Hebrew language*, arising as much from spleen as from ignorance, on which the Court thinks you should find in *favour of the defender*—but from thence, where the issue refers to the pursuer's having a prejudice against the Hebrew language, arising out of the unhappy circumstances in which it is placed, as being the language of religion, and of the Old Testament, and ascribing improper motives to the pursuer for his attacking it,—the Court are of opinion, that the words of the libel given in this part of the issue, are not to be ascribed to fair criticism, and are not entitled to the protection of the law, unless they had been warranted by the general character, or by the works, of the pursuer, Mr. Leslie, and therefore, as to this part of this first issue, the Court thinks your finding should be *for the pursuer*. Here again the party may take his bill of exceptions, if he thinks proper, by means of which the decision you may give on this point, may be taken to the Court of Session, and from that Court, even to the House of Lords, by an Appeal.

As to the concluding part of this issue, where the libel holds out the pursuer as the person by whom the students of medicine at this university are said to have their religious principles perverted, and their reverence for holy things sneered away; it is for you, Gentlemen, as I have already stated, to make up your own minds, and this you will do according to your own good sense and sound understanding of the words used.

Gentlemen, I have no more to say.—It is emphatically your province, as jurymen, to assess the damages. If you find the issues, or part of the issues, proved, and that the matter referred to in what you find so proved, is of and concerning the pursuer, and that it is libellous, then you will find such



damages due, as you, in the exercise of sound sense, shall think will be sufficient to compensate the party for the injury he has sustained. This is a case for damages, if you find it proved on the issues, as I have pointed out; and it is especially a case for damages, if you find for the pursuer on the latter part of the first issue, because the opinion of the Court is, that that latter part, if proved, is a case for damages.

Or rather, if you come to be of the same opinion with the Court, and also, that the *fourth* issue is proved, you will find for the pursuer on all the issues, excepting that part of the first issue which I have pointed out; the issue in justification being given up.

MR. FORSYTH.—My Lord, we did not give up the issues in justification, though we did not lead any proof. We argued upon them, and we cross-examined the pursuer's witnesses, in order to prove those issues.

CHIEF COMMISSIONER.—Mr. Forsyth, I gave all due consideration to that part of the evidence in my charge to the jury.

MR. FORSYTH.—We must take a bill of exceptions, of course.

The jury then retired, and remained inclosed for an hour and a half, when they returned, and gave in their verdict, as follows:

## VERDICT.

*Edinburgh, 22d July, 1822.*

On the First Issue, the Jury find for the defender to the words, "We must look," in the seventh line of page 3. of printed Issue. To "He may," in the twenty-first line, for pursuer. And the remainder for the defender.

On the Second and Third Issues, for pursuer.

On Fourth, for the defender.

Damages, £100.

MR. FORSYTH, after the verdict was read by the clerk, tendered a Bill of Exceptions for the defender, on the ground of misdirection, in several instances ; but this Bill appearing to the Court to be in some respects erroneous, liberty was given to the party to withdraw it, and substitute another Bill, to be afterwards lodged.

NOTE of BILL of EXCEPTIONS given in by the Defender, *in causa* LESLIE *versus* BLACKWOOD.

EXCEPT to that part of charge which directed Jury to find part of Issues—first and third—to be libel, and not criticism.

And to that part of the direction which stated, that as no evidence had been brought forward directly by the defender, but merely a cross-examination of pursuer's witnesses, and in writings produced for pursuer, the defender must be held to have abandoned all his Issues in justification ; and also in so far as it was stated, that taking Issues in justification implies, or admits, the relevancy of the charge made by pursuer as a libel.

(Signed) J. S. M.







